I am a member of the bar of this Court and one of the attorneys for the Plaintiff who filed the original complaint. May it please the Court, I am prepared to make an opening statement. However in view of the fact that we hope the Court will indulge in some oral argument later, I thought perhaps it would be best to proceed with the introduction of some documentary evidence which I have here which [fol. 236] forms the basis of this case.

Judge Kerner: That is the proper procedure I think.

Mr. Ellis: (For the Pltfs.) I have asked the Clerk to put before each one of the members of this Court a schedule which indicates what these documents are. Do you have them, Mr. Clerk?

(The Clerk presents the Judges with said schedule.)

Offers in Evidence

Mr. Ellis: (For the Pltfs.) Due to the method of certification by the Secretary of the Interstate Commerce Commission over which we have no control, there are a number of different exhibits; but Exhibits 1 to 5, inclusive, are a certified copy of the Stenographer's minutes of the evidence before the Defendant Interstate Commerce Commission, pages 1 through 3640, inclusive. And I now offer in evidence on behalf of the complainants separately and severally, Exhibits 1 through 5, inclusive.

(Eastern Motor Express, et al, Exhibits 1 through 5, are offered in evidence by Mr. Ellis.)

Judge Kerner: I think there is no objection. It may be received and so marked.

[fol. 237] (Eastern Motor Express et al, Exhibits 1 through 5 are admitted and read into the evidence and made a part of the record in this case, which said exhibits are in the following words and figures, to-wit:)

(Here insert.)

[fol. 238] Mr. Ellis: (For the Pltfs.) In conference with Mr. Reidy and Mr. Howell, attorneys for the Defendant, Interstate Commerce Commission, we have arrived at an agreement that certain documents which are outside the Stenographer's minutes which one party or the other

thought might be helpful in this case. Exhibit 6 is such a document under one certification and it includes the various documents set out on pages 1 and 2 and the top of page 3 of this memorandum. Now that does not include all of the pleadings, but it includes all the orders of the Commission of any type and the pleadings particularly filed by these Defendants—I mean these Plaintiffs. There are other pleadings filed which we felt were not germane to the particular issues here. And we now offer in evidence Exhibit 6 which is a certified copy of the documents listed in the memorandum I furnished the Court.

(Eastern Motor Express, et al, Exhibit 6 is offered in evidence by Mr. Ellis.)

Judge Kerner: It may be received and so marked.

(Eastern Motor Express, et al, Exhibit 6 is admitted and read into the evidence and made a part of the record in this case, which exhibit is in the following words and figures to-wit:)

(Here insert.)

[fol. 239] Mr. Ellis: (For the Pltfs.) The explanation made to Exhibit 6 applies equally to Exhibit 7. It is under one certification—a number of exhibits, documents, and other matters which were before the Defendant Interstate Commerce Commission and it was arrived at in the same manner with the conference of the attorneys for the Defendant Interstate Commerce Commission. And the Plaintiff now offers in evidence Exhibit 7.

(Eastern Motor Express, et al, Exhibit 7 is offered in evidence by Mr. Ellis.)

Judge Kerner: It may be received.

(Eastern Motor Express, et al, Exhibit 7 is admitted and read into the evidence and made a part of the record in this case, which exhibit is in the following words and figures, to-wit:)

(Here insert.)

[fol. 240] Mr. Ellis: (For the Pltfs.) That concludes the exhibits which we have arrived at by mutual agreement. From here on, the matter of those which the Plaintiffs are offering—I learned that the Defendant, Interstate Commerce Commission, on the 8th day of October, 1951, while

this matter was pending in this Court, had made another order exempting certain favored carriers from certain provisions of the order complained of. Exhibit 8 is a certified copy of that order, certified by the Secretary of the Interstate Commerce Commission, and it is now offered in evidence by the Plaintiffs.

(Eastern Motor Express, et al, Exhibit 8 is offered in evidence by Mr. Ellis.)

Mr. Reidy: (For the I.C.C.) In connection with the last numbered exhibit relating to exempting some household goods carriers from the Commission's order in this case, that is due solely to the fact that petitions of the carriers involved are now pending before the Commission. And until the Commission determines the status of those carriers, it is thought appropriate and indeed necessary, to remove them from the order. We have no objections to putting it in.

Judge Kerner: It may be received and marked Exhibit 8. [fol. 241] Mr. Ellis: (For the Pltfs.) Each bearing a separate certification because that was the manner in which the Secretary of the Defendant Commission desired to do it.

(Eastern Motor Express, et al, Exhibit 8, is admitted and read into the evidence and made a part of the record in this case, which exhibit is in the following words and figures, to-wit:)

(Here insert.)

[fol. 242] Mr. Ellis: (For the Pltfs.) Exhibit 9, through and including Exhibit 30, inclusive, are the certificates of public convenience and necessity, issued to the Plaintiff by the Defendant Commission, authorizing them to operate motor vehicles as common carriers in interstate and foreign commerce. The reason for offering these exhibits is because in the complaint in certain paragraphs therein, to-wit, 1 to 21, inclusive, there are allegations as to the operations of these Plaintiffs. The answer of the Defendant Interstate Commerce Commission from which I now quote says, "Answering the allegations of paragraph 1 to 21 inclusive of the complaint, the Commission admits the same, to the extent that the carriers specified in said paragraphs are authorized to operate as motor carriers under lawful certificates issued by the Interstate Commerce Commission and presently out-

standing." We had been hopeful that the Commission would admit those allegations since the matters were all in their files, and since they chose to take this position, we are now offering in evidence certified copies of our authority [fol. 243] to prove the allegations in the complaint in paragraphs 1 to 21, inclusive. The Plaintiffs now offer severally and separately Exhibits 9 through 30, inclusive.

(Eastern Motor Express, et al, Exhibits 9 through 30, both inclusive, were offered in evidence by Mr. Ellis.)

Judge Kerner: They may be admitted and so marked.

(Eastern Motor Express, et al, Exhibits 9 through 30, both inclusive, are admitted and read into the evidence and made a part of the record in this case, which exhibits are in the following words and figures, to-wit:)

(Here insert.)

[fol. 244] Mr. Ellis: (For the Pltfs.) The next group of exhibits, 31 to and including 51, inclusive, are certified copies of the annual report of these Plaintiffs made to the Defendant Interstate Commerce Commission pursuant to law and pursuant to the requirements of said Commission. They are offered in evidence here for the reason that the Defendant Commission for some reason unknown to me decided that they had no knowledge of these, although they are right down there in their files. We used these for the basis of the allegations concerning our operations—our revenues, and so forth, which are set forth in part in the complaint, and since the Commission apparently is not advised of what it has in its files, we offer separately and severally under the certification of that Commission Exhibits 31 to 51, inclusive.

(Eastern Motor Express, et al, Exhibits 31 to 51, both inclusive, are offered in evidence by Mr. Ellis.)

Judge Kerner: No objections to those?

Mr. Reidy: (For I.C.C.) No objections, your Honor.

[fol. 245] Judge Kerner: They may be received and marked as requested.

(Eastern Motor Express, et al, Exhibits 31 through 51, both inclusive, are admitted and read into the evidence and made a part of the record in this case, which exhibits are in the following words and figures, to-wit:)

(Here insert.)

[fol. 246] Mr. Ellis: (For the Pltfs.) Turning to the last matter, Exhibit 52, marked for identification in this Court, the same is the certified copy certified by the Secretary of the Interstate Commerce Commission of Exhibit—of the annual report of said Commission for the year ending November 1, 1950. The entire report is certified but there is much matter therein not germane to the case at bar, and these Plaintiffs offer in evidence the first paragraph on page 98 of said report appearing under the caption "Bureau of Motor Carriers," the same being the third paragraph, omitting captions, on said page and pages 151 and 152.

(Eastern Motor Express, et al, Exhibit 52 is offered in evidence by Mr. Ellis.)

Mr. Reidy: (For I.C.C.) That is all right. No objections.

Judge Kerner: That Exhibit may be marked 52.

(Eastern Motor Express, et al, Exhibit 52 is admitted and read into the evidence and made a part of the record in this case, which exhibit is in the following words and figures, to-wit:)

(Here insert.)

[fol. 247] Mr. Ellis: (For the Pltfs.) At the suggestion of the Clerk, we have placed the Exhibits in the order in which they were offered and admitted on the rail on the jury box for the examination by anyone who cares to look at them. That completes the documentary evidence we desire to submit. At this time I desire to call as a witness, Mr. Simon Fischer of Chicago, Illinois. I would like him sworn to take the witness stand.

Judge Kerner: Just one moment, Mr. Fischer.

Mr. Reidy: (For I.C.C.) Just One moment——

COLLOQUY RE HEARING OF EVIDENCE

Judge Kerner: (Interposing) I don't know what the purpose is; ordinarily we do not have much evidence at all. We are not trying a case de novo; we are trying it on the record made before the Commission.

Mr. Ellis: (For the Pltfs.) We are prepared, and I will——

Mr. Reidy: (Interposing for the I.C.C.) The Supreme Court has held in several cases these are not appeals where new evidence can be introduced.

Judge Kerner: I think I rendered a decision to that effect, [fol. 248] haven't I, up in Chicago?

Mr. Ellis: (For the Pltfs.) I can hardly say what I was going to say, your Honor, but Mr. Reidy was not informed to what the Supreme Court has done.

Judge Kerner: That is correct. I want to hear what you have to say.

Mr. Ellis: (For the Pltfs.) I have here, because I anticipated this would come up, a trial memorandum on this subject matter. Miss Larimore and Mr. Diehl, would you give counsel over there some copies, and if I may, I will now address myself to the matter of calling this witness for oral testimony to which I understand the state of the record that you have made an objection, Mr. Reidy. Is that correct?

Mr. Reidy: (For the I.C.C.) A tentative objection.

Judge Kerner: I think it would be better if we hold the objection until we hear your statement. You just forget what I said a moment ago; perhaps I might have been wrong.

[fol. 249] Mr. Ellis: (For the Pltfs.) Yes, sir. If you will turn to page 4 of this memorandum because the proceedings in part cover the matters which have already been admitted in evidence, and I call attention to the two specifications, Arabic numerals (4) and (5) which follow a caption indicating that we propose to submit, first, which is item (4), their "Oral testimony as to value of Plaintiffs' property and rights"; (5) "Oral testimony as to the effect of the order on said property and rights".

"In support of the contention of the plaintiffs that the evidence listed under this specification is admissible in this cause, we respectfully call to the attention of the court the decision of the Supreme Court of the United States in Baltimore & O. R. Co. v. United States, 298 U. S. 349, 80 L * * *" with other citations. " * * * Pertinent observations of the Supreme Court of the United States in that case relative to matters of evidence involved herein are

as follows:"; and I would like to read these. Although they are separate quotations, they are in line here.

> " 'While presumed valid its order may be annulled if shown to rest on a misconstruction of the act or upon inadequate or unsupported findings of fact.' "

[fol. 250] And then in the same decision, at page 1221:

> " 'There is a wide and fundamental difference between the question whether the Commission in prescribing divisions found by it to be just, reasonable and equitable, complied with the procedural requirements of the act, (this was a rate case in which confiscation was alleged) and whether, if enforced against objecting carriers, the order will confiscate their property. The Commission's finding of fact in the field first mentioned, if based on evidence, are conclusive. But upon the question whether prescribed divisions constitute just compensation within the meaning of the fifth amendment, Congress is without power conclusively to bind the carriers. As the Congress itself could not be, so it cannot make its agents be, the final judge of its own power under the Constitution. Congress has no power to make final determination of just compensation or to prescribe what constitutes due process.' "

Turning to page 5 of the memorandum, at page 1224:

> " 'The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial functions involved. That includes the right to introduce evidence and have judicial findings based upon it.' "

And then again, at page 1226: which is really the nub of the whole decision and I think it is right in point with the matter.

> " 'Appellant's appropriately invoked judicial power to obtain constitutional protection against the Commission's order. The district court rightly held them entitled to introduce evidence in addition to that con-

[fol. 251] tained in the record before the Commission and rightly proceeded upon consideration of all the evidence to make findings and upon the basis of the facts that it found, to decide upon the constitutional question.' "

And then to the same effect, which I am not quoting here, is United States versus Idaho, 298 U. S. 105, and there are other decisions that point to the same proposition. In this complaint, it should be borne in mind that we allege that the order complained of confiscates the property of these plaintiffs in violation of the Constitution of the United States. And we respectfully submit to this Court, in view of the decision which we cited and the one which we read and the particular quotation which we think fits this case like a glove, that we have a right to submit such evidence in this Court.

Mr. Reidy: (For the I.C.C.) Your Honor, I want to be heard, if your Honors please, in opposition to evidence de novo. Now that Baltimore & Ohio case in 298 U. S. 349, on which Mr. Ellis relies, was a rate case in the Supreme Court and a later case in New York versus United States, 331, U. S. 284, which is the famous Class rate case, involving rates between the South and the North, and whether [fol. 252] they were discriminatory. The Supreme Court distinguished the B & O case and pointed out that in that case the appellants, or the plaintiffs below sought to introduce evidence first before the Commission in support of the confiscation and that the Commission denied them an opportunity to do so. Therefore, they had no other place to go than the Supreme Court and they said it was appropriate for the District Court, under those circumstances, to receive evidence de novo. But in the subsequent class rate case in 331 U. S., the Supreme Court said this case therefore is not like the Baltimore & Ohio Railroad, 298 U. S. 349, where the Commission refused to receive evidence proffered on the point of confiscation. Here we have said the Commission received all evidence that was offered, and when its order was announced and made known and the petition for rehearing was filed, the opportunity to tender additional evidence to bolster the confiscation point was not accepted as stated in 246 U. S. 457. And in the St. Joseph Stock

Yards Company, 298 U. S. 38, "Correct practice requires that where the opportunity exists, all pertinent evidence bearing on the issues tendered the Commission should be submitted to it in the first instance and should not be received by the District Court as though it were conducting [fol. 253] a trial de novo. The reason is plain enough. These problems of transportation economics are complicated and involved. For example, the determination of transportation costs and allocation among various types of traffic is not a mere mathematical exercise." Well, I won't read any more. That is enough to give your Honors——

Judge Kerner: (Interposing) You say that the Plaintiffs in this case have had the opportunity before the Commission of introducing all that evidence?

Mr. Reidy: (For the I.C.C.) Yes, Sir.

Judge Kerner: And did they introduce any evidence along that line?

Mr. Reidy: (For the I.C.C.) This is the first opportunity I knew about this offer. I don't think they ever made any effort to introduce this evidence before the Commission. That is my understanding.

Judge Kerner: Your contention is that under this case 331 that they had the opportunity and didn't take advantage of it.

Mr. Reidy: (For the I.C.C.) That is correct, yes, Sir. Under the Commission's rules of practice, of course you [fol. 254] can file petitions for re-hearing and they did file a petition for re-hearing which is a part of this record. And I might say this confiscation point is a new one. I don't think in those petitions for re-hearing they raise that particular point.

Judge Kerner: Ought we be more sure about that? You say you don't think; ought we not know more positively whether they did or did not?

Mr. Reidy: (For the I.C.C.) Yes, I think so. Your petition, when you filed for re-hearing, did you raise the question of confiscation such as you are raising now?

Mr. Ellis: (For the Pltfs.) We raised it ever since these proceedings started.

Judge Kerner: Did you secure and present this evidence through the Commission on your petition for re-hearing?

Mr. Ellis: (For the Pltfs.) This is the situation, your Honor as to that. We could not assume that this Defendant Commission would make an order confiscating our property; therefore in the original hearing which that is the trans- [fol. 255] cript over there, we didn't assume that they were going to confiscate our property. We assumed they were interested in rule making. After they made this unlawful, as we term it, order; we petitioned and in fact, there were a large number of them—all of these plaintiffs in this Court petitioned for reconsideration and have an opportunity to go down there and discuss these confiscatory angles. That was denied in two or three sentences, more or less, which is a certified copy over there, and I assert that we have never had an opportunity before the Interstate Commerce Commission to submit the evidence that we propose to submit here. And there is one thing further; may it please the Court. The Defendant Interstate Commerce Commission, as we view it, is now estopped from making the objection that they make here. They filed an answer in this case which placed the case at issue. They didn't demur to any portion of the complaint. They didn't file a motion to strike out any part of it. They didn't say that the complaint—the complaint didn't state the cause of action; instead they answered it by either saying they admitted some things or they denied some things, and some things they said they didn't know about, which we believe [fol. 256] puts us on our proof. We think if they felt these matters were not germane to this cause and were not the proper subject of evidence before this Court, they should have attacked our complaint and not answered it; because having answered it, the burden, as we view it, is upon us to prove the allegations of our complaint; which we propose to do if permitted by this Court, by the evidence we propose to introduce on the question of confiscation of our property.

Judge Kerner: I understand there is a case somewhat similar to this one pending in some Alabama court.

Mr. Ellis: (For the Pltfs.) That's right.

Judge Kerner: Was this point raised in the Alabama case?

Mr. Ellis: (For the Pltfs.) I want to say this, your Honor. I was not a party to or present in Alabama, but I know

something about it. There are several suits involved in this and there is a good reason for it.

Judge Kerner: The question I would like to have an- [fol. 257] swered, Mr. Ellis, was this point made in the Alabama case and did the Court there permit the hearing of this testimony?

Mr. Ellis: (For the Pltfs.) There was no effort to introduce such testimony and no ruling by that Court. Is that correct, Mr. Reidy?

Mr. Reidy: (For the I.C.C.) That is correct.

Mr. Ellis: (For the Pltfs.) That is one reason, your Honor, why we are here instead of being lumped together in some other lawsuit because we want an opportunity to present to this Court what will happen to us should this unlawful order go into effect.

Senator Wheeler: (For the Teamsters Union) May it please the Court, I want to say this. These hearings were——

Judge Kerner: (Interposing) You mean the hearings before the Commission?

Senator Wheeler: (For the Teamsters Union) Before the Commission. Mr. Blanning first proposed certain alternative rules. He pointed out the conditions with reference [fol. 258] to trip leasing and all these phases and submitted various alternative rules that might be adopted by the Commission, and suggestions. The question of trip-leasing was raised and Mr. Ellis appeared before the Commission—whether he represented all these Defendants or not—but he did represent certain Defendants before these hearings. The hearings were held in Washington for quite a long period of time, and they were then held in St. Louis before an examiner. The examiner made his report and then it went to Division Five. Division Five went over it; they modified the Examiner's report and it then went before the full Commission and was argued orally before the full Commission. At no time—at no time before the Commission was there ever any questions. Now when they state that they didn't know what the rules were going to be, that whole matter was argued before the Commission, in briefs filed before the Commission and oral argument. I personally argued it to the Interstate Commerce Commis-

sion and others argued it with reference to trip-leasing and said it should be abandoned entirely and witnesses testified; some of the trucking companie testified that trip-leasing should be eliminated entirely, that there should be no trip-leasing; they ought to be outlawed entirely. So [fol. 259] that question came formally before the Commission and Mr. Ellis was there representing clients and he knew the situation, and to come in now and say they wanted to introduce evidence because the property was confiscated then and under the greatest stretch of the imagination, can anybody say that property was confiscated?

Judge Kerner: Anything further?

Mr. Ellis: (For the Pltfs.) I would like to just say this. What Mr. Wheeler has said might go to whether these rules were proper or not, but I don't believe it goes much to the question now before this Court. And I assert that the question of confiscation of property was not raised down there, because, as he said, when we had that oral argument before the entire Commission, Division Five, comprised of three members charged with motor vehicles—motor vehicle cases unanimously made an order supporting our contentions that these now adopted rules and regulations were unconscionable.

Senator Wheeler: (For the Teamsters Union) May I add one word. Division Five did not adopt the rules they wanted. Division Five made rules which they themselves, [fol. 260] which their clients opposed. Many trucking people were opposed to them. They did modify the rules brought in by the Examiner. They modified those rules but they did provide for the regulation of trip-leasing which the Plaintiffs in this case now contend that the Commission had no right to do. There never has been, I will venture to say, before the Interstate Commerce Commission a large—a great amount of testimony introduced by everybody from one end of the country to the other. Every truck operator and everybody interested was notified—all of the—the American Association, the American Trucking Association was advised; they were there representing the trucking industry party. These people here belonged to the A. T. & T. and it was the A. T. & T. that brought the suit in Alabama. And they didn't raise a question at all with

reference to it, and as I say, their clients here belong to the A. T. & T. and they were invited to join us. They were invited to join the A. T. & T. in their suit in Alabama, but they didn't join in that suit. They brought the suit out here after the A. T. & T. brought the suit in Alabama. So to say that they didn't have any opportunity to present their testimony is purely ridiculous, in my judgment.

[fol. 261] Mr. Ellis: (For the Pltfs.) May it please the Court, I don't want to prolong this argument, but Senator Wheeler by advertence, I am sure, made an absolutely erroneous statement. This lawsuit was not brought after any lawsuit in Alabama, Michigan or Ohio. This was the first lawsuit brought in the United States on this order of attacking this order.

Senator Wheeler: (For the Teamsters Union) I will stand corrected on that.

Mr. Ellis: (For the Pltfs.) I think you better.

Judge Kerner: How long will this evidence take?

Mr. Ellis: (For the Pltfs.) I would say the direct examination would take about ten minutes and maybe less.

Judge Kerner: You make your offer, Mr. Ellis, as to what Mr. Fischer would testify to, and we will rule on it then.

PLAINTIFF'S OFFER TO PROVE

Mr. Ellis: (For the Pltfs.) Witness Simon Fischer, if permitted to testify would testify that he is more than [fol. 262] twenty-one years of age, a citizen and resident of the city of Chicago, Cook County, Illinois; that he is president of the Spector Motor Service, Inc., a corporation organized and existing under the laws of the State of Missouri with its principal corporate office located at 905 Ninth Street, St. Louis, Missouri, and its principal place of business located at 600 West Twenty-fifth Street, Chicago, Illinois, and said Spector Motor Service, Inc., is one of the Plaintiffs in the cause now in hearing before this court. He would further testify that said Spector Motor Service, Inc., is a common carrier of a motor vehicle transporting commodities generally with the usual compensation—And then for purposes of brevity, I will not recite that. But he would tell where they operate; he would further testify that the operations of the Plaintiff Spector

Motor Service has been in continuous existence since September 16, 1932 and that its certificate was received originally under the so-called "grandfather" clause of the Motor Carrier Act of 1935, now Part II of the Interstate Commerce Act; that said Spector Motor Service for the year 1950 had gross revenue for the transportation [fol. 263] of freight between the points and in the territory which it is authorized to serve of nearly eleven million dollars ($11,000,000) and for the first months of the current year of 1951, gross revenue in excess of nine million dollars ($9,000,000). He would further testify for the year 1950, said Spector Motor Service transported in excess of sixty-five hundred—fifty-eight million pounds of freight and for the first nine months of 1951 in excess of five hundred and twenty-five million pounds of freight; that in connection with its operation it uses certain equipment which I will not list because he can testify in detail concerning that. He would further testify that the total gross revenue of said Spector Motor Service is—fifty per cent of it is derived from the operation of leasing vehicles. The witness, if permitted to testify, would further testify that the use of vehicles under long-term lease and trip-lease is as carried out by said Spector Motor Service, is necessary and essential to the said operations of said company in transporting freight and providing service to shippers, and it provides sufficient revenues to meet the necessary and reasonable operating expenses of the company and provides [fol. 264] any return whatsoever to the owners thereof. The witness would further testify that said Spector Motor Service, Inc. from time to time leases and interchanges equipment from other authorized common carriers operating in the United States with the transportation of freight with such lease and interchange of vehicles between points which said Spector Motor Service, Inc. is authorized to serve and points which said vehicle carriers are authorized to operate. He will further testify that during World War II his company transported large amounts of freight for the United States Government for defense and war industries under the provisions of orders of the defense transportation which provided and ordered this company and this Plaintiff to do the very things during that emergency which the

Interstate Commerce Commission now seeks to prevent. He would further testify at the present time seventy-five per cent of all the freight handled by the Plaintiff Spector Motor Service is for the defense effort of the United States. He would further testify that the present long and established lawful business with the company will suffer irreparable injuries should the order complained of be admitted to become effective December 1, 1951, the present effective date. [fol. 265] He would further testify that the Spector Motor Service is now and has been for years conducting its business in a lawful manner and is not now and has not in the past, violated the laws of the United States and has observed and followed the provisions of Part II of the Interstate Commerce Commission and existing rules and regulations of the Interstate Commerce Commission. He would further testify that the—his company is one of twenty-one large motor common carriers operating in essentially the same portion of the United States but whose complete operations cover thirty-one states and the District of Columbia who are plaintiffs in this proceedings; that he is familiar with the operations of said other Plaintiffs in that in order to avoid a multiplicity of witnesses he has familiarized himself and is prepared and authorized and will, if permitted, testify to the revenue, tonnage and percentage of detrenched traffic handled by each of the other Plaintiffs in this case. Should that testimony not be permitted by Mr. Fischer, we have twenty other witnesses here, but we don't want to call them. That in substance, may it please the Court, is—is that portion of his testimony. He also will testify as to the damage which will occur to these Plaintiffs if the present order should become permitted to become effective. [fol. 266] We think this testimony should be heard by this Court. It could not have been presented to the Interstate Commerce Commission back in 1948.

Mr. Helmetag: (For Intervening Railroads) If the Court please, there is not the slightest doubt that all the testimony that Mr. Ellis just referred to could have been submitted to the Commission. In the first place, the Commission served a set of tentative rules upon all the motor carriers and made them all respondents. The tentative rules indicated that the Commission had in contemplation the pro-

hibition of trip leasing, the very thing which is covered by the offer of proof by Mr. Ellis. Now this carrier, Spector Motor Company, could have appeared before the Commission at any one of the four hearings and presented the precise testimony that was referred to in that offer of proof. Now furthermore, after all, the proof was before the Commission. The Examiner recommended the trip-leasing be abolished, and this same carrier could have filed exceptions to that report pointing out the adverse effect of trip-leasing on its particular operation. And then after the rules were promulgated by Division Five, all the parties had the right to file petition for reconsideration and replies to the [fol. 267] petition for reconsideration. And this was done by many of the parties, and then the matter was argued orally before the Commission and one of the—the key features of that argument was whether or not trip-leasing should be abolished and the effect of abolishing trip-leasing on the various carriers. And so there was ample opportunity for Spector and any of the other Plaintiffs to present the testimony showing the adverse effect of trip leasing on their operations; and to permit that testimony to be introduced now will certainly unduly complicate the record and it seems unnecessary.

Judge Kerner: After due consideration—Someone else want to say something?

Mr. Howell: (For the I.C.C.) If the Court please, I am Mr Howell from the Interstate Commerce Commission. If one witness testified to the things that Mr. Ellis's witness says he will testify to if permitted to—there were at least fifty that testified to the identical things that this witness here says he will testify to—so it would just be an accumulation of testimony anyway and I don't think it is necessary. [fol. 268] Judge Kerner: Now, I commenced to say that after due consideration the Court is compelled to the conclusion that the objection ought to be sustained, and it is so ordered. The record will now show what your offer is, and I am of the opinion that even after we hear all of the argument and arrive at the conclusions, that any additional testimony ought to be heard by the Commission. We could send it back if we so decide. At this time the objection to the evidence will be sustained.

Mr. Ellis: (For the Pltfs.) May it please the Court, may the record show our exceptions.

Judge Kerner: Oh yes, you don't need any exception, but it is all right.

Mr. Ellis: (For the Pltfs.) May it please the Court, as far as these Plaintiffs are concerned, that concludes any evidence that we desire to offer. If any other party, of course they will proceed. Before I sit down for a moment, I respectfully request this Court to give me an opportunity to argue this case.

Judge Kerner: Oh, you certainly shall have the opportunity to argue it. Anything else on behalf of the Plaintiffs? Does the Plaintiff rest?

[fol. 269] Mr. Ellis: (For the Pltfs.) Yes, Sir.

Plaintiffs rest.

Judge Kerner: Anything on behalf of the Defendant?

Mr. Reidy: (For the I.C.C.) We have no testimony to offer. We have briefs here to file.

Defendant rests.

[fol. 270] Judge Kerner: How much time will all counsel want to argue this case, so that I will have some idea so I can regulate Judge Casper's time to get back, and my own?

Mr. Ellis: (For the Pltfs.) In behalf of the Plaintiffs, I request that I be given an hour and a half to argue this case in chief, and thirty minutes of rebuttal at the close of the other side. Mr. Cockrum of the Department of Agriculture, and these other gentlemen can speak for themselves.

Mr. Cockrum: (For the Dept. of Agriculture) Your Honors, I believe twenty-five minutes would be sufficient.

Mr. Burchmore: On behalf of the National Industrial Traffic League, I request fifteen minutes to present our argument.

Judge Kerner: Mr. Jones, do you want to speak, too?

Mr. Jones: On behalf of the Public Counsellor of Indiana, I would request approximately fifteen minutes.

[fol. 271] Judge Kerner: Two or three hours. How about you?

Mr. Reidy: (For the I.C.C.) I think we could get by in two hours and a half.

Judge Kerner: Perhaps we can finish it today.

Mr. Reidy: (For the I.C.C.) We were hoping we could finish today.

Judge Kerner: You may proceed, Mr. Ellis. It is understood we will devote five hours to argument.

ORAL ARGUMENT FOR PLAINTIFFS

Mr. Ellis: (For the Pltfs.) Will you watch the time, Mr. Diehl. May it please the Court, before beginning my argument, I want to say in behalf of the Plaintiffs, Mr. Diehl and myself—my co-counsel—have prepared a rather exhaustive brief on this subject to which I have furnished copies to the Clerk and they may be before your Honors. I call attention to the brief at this time, not because I am going to cover everything that is in there, but to indicate that if the Court has any interest in any cases that I may be referring to, the proper citations may be found in that brief. And will you please, Mr. Diehl, give the gentlemen [fol. 272] on the other side a copy of our brief.

Judge Kerner: One other question, Mr. Ellis, about the Alabama case. Has that Court decided the issues?

Mr. Ellis: (For the Pltfs.) Not that I know of.

Judge Kerner: What are the chances of it being decided in the very near future? do you know about that?

Mr. Helmetag: (For Intervening Railroads) That case was submitted to the Courts on brief without oral argument, Sir, and the Court indicated that a decision would be forthcoming prior to the first of the year. They spoke about a decision sometime during the Christmas holidays, not in the nature of a Christmas present.

Judge Kerner: Perhaps for someone it might be.

Mr. Helmetag (For Intervening Railroads) But they also indicated, too, they might go a little bit beyond that, but they were going to put it first on their docket. I understand the Court is now going through the record and ap- [fol. 273] plying the briefs to the record.

Mr. Ellis: (For the Pltfs.) In that connection, may it please the Court, the matter that I am referring to—the motions——

Judge Kerner: (Interposing) It is Judge Steckler's de-

sire to know whether the briefs have been filed in that matter.

Mr. Helmetag: (For the Intervening Railroads) Yes, Sir, they have all been filed.

Mr. Ellis: (For the Pltfs.) In that connection, I want to call attention to this Court and these two cases that I am going to refer to, are not in my brief because this is another matter. It is our position it doesn't make any difference what happens down in Alabama, in view of the attitude of this Defendant Interstate Commerce Commission.

Judge Kerner: I hope I didn't leave you under the impression that what happened down there would make any difference here except we might gain something from reading the opinion.

Mr. Ellis: (For the Pltfs.) That is right, Sir. But what I wanted to point out was in that very circuit down there, the Interstate Commerce Commission versus Donnely Case. [fol. 274] That is the Interstate Commerce Commission lost the case and did not appeal it to the Supreme Court, and then proceeded to have the law one way down there in three or four states in the South, and enforced it another way all over the rest of the United States, and I have the cases here to prove that. So we think that we should be heard in this jurisdiction.

May it please the Court, the Plaintiffs here are Eastern Motor Express, Inc., of Terre Haute, Indiana, and some twenty other large motor common carriers of property. They sued to enjoin and set aside a certain order of the Interstate Commerce Commission approved May 8, 1951, in "Ex Parte No. MC 43—Lease and Interchange of Vehicles by Motor Carriers." These Plaintiffs operate principally in the Eastern and Middle Western sections of the United States, but the complete operations extend into thirty-one of the forty-eight states and the District of Columbia. During the year 1950, and these matters are in evidence in these annual reports, the gross revenues of these Plaintiffs from the transportation of freight amounted to in excess of one hundred seventy-six million dollars ($176,000,000), and they have over twenty-six million dollars ($26,000,000) invested in terminal facilities and motor ve- [fol. 275] hicles. I mention that because the Defendant

Interstate Commerce Commission in its answer *seen* fit to refer to us as, "infinitesimal", and I quote, "segment of the motor carriers". As a matter of fact, we haul most of the freight that is hauled by common carriers in the states and their own reports prove that.

It is necessary in a case of this kind, your Honors, under the provisions of the law to make the United States of America the Principal Defendant. And that was done here. In the case at bar, however, the United States of America through representatives of the Department of Justice, including the United States District Attorney for this Court, has filed an answer in which the Department of Justice refuses to defend the unlawful and unconscionable order we are attacking for the reason that a member of the President's Cabinet, the Secretary of Agriculture in the United States, has intervened in this case and filed a complaint and has joined us in the request in asking this Court that the order be stricken. Thus it would seem in this particular proceedings that the United States of America has either moved over to our side of the table, or at least it has taken a neutral corner. The order complained [fol. 276] of would place in effect certain harsh, drastic, unworkable and unlawful rules and regulations governing the lease and interchange of vehicles by these Plaintiffs. Should this order become effective, your Honors, these Plaintiffs would no longer be permitted to supplement the fleets of vehicles which they now have and operate by so-called short term leases and trip leases, when they have an overflow of freight, more than they are transporting with the vehicles that happen to be stationed in a particular city, because under this order it would be unlawful to lease a vehicle for less than thirty days. Furthermore, all of the long term leases, which have been in existence, in some instances, for twenty-five and thirty years, would be set aside because they are mostly on a basis of paying for the lease rental on a division of the revenue—a percentage, which seems to be the fairest method. That is, if the vehicle hauls a highly rated commodity and the carrier gets a high rate for it, the lessor gets his proportionate share of that. If the freight is, on the other hand, a lower rate of commodity, the lessor gets a lower rate of compensation. It has been

approved and has been the existing method through the United States long before the Interstate Commerce Commission had any jurisdiction over these matters. [fol. 277] Furthermore, these rules and regulations set out in this order would interfere with the interchange of vehicles between common carriers; and I'll challenge anyone in the United States who can read these ambiguous and complicated rules relative to interchange and tell this Court or anyone else exactly what they mean. I mention briefly just the import of this order, and I want to point out to the Court it is our contention that these regulations are unlawful and were made without any authority of law. We further contend that the property of these Plaintiffs will be confiscated without due process of law. Our position on these propositions will be discussed as fully as possible during the time, but I do not propose to discuss all the propositions which we have advanced in our brief and omissions of many of those does not mean we failed to regard them as important. Before entering into discussion of these legal propositions, however, we desire to make a brief reference to the nature of these proceedings before the Interstate Commerce Commission. The Commission gave notice, or a purported notice, of these proceedings in an order dated January 9, 1948, published in the Federal Register, and as an appendix of said order, there were [fol. 278] certain proposed rules and regulations, a number of which were conflicting, directly contradictory and accomplished diametrically opposite results. Thereafter a series of hearings were held, principally at Washington, and an examiner filed a report in which he recommended the adoption of harsh, drastic and unlawful rules and regulations somewhat similar to those in the order now complained of but not quite as bad.

We filed our exceptions to that recommended order and Division Five and the Court, I am sure know, that the Interstate Commerce Commission, to share the work down there, is divided up in divisions. Division Five is the one since 1935 which has been charged with the motor carrier regulations, and they know more about it than anybody else. It is headed by Commissioner Lee, the outstanding man in the motor regulations, and a Justice of the Supreme Court

for many years, and he ought to know something about these matters. Division Five unanimously sustained our position and set aside this order of the Recommendation of the Examiner, and while they assumed in that order the—to make some regulations which would have been burdensome and we believe beyond the power of the Commission, [fol. 279] we indicated that we would accept them and abide by them and follow them because they did not confiscate our property. That order was then made the subject of reconsideration by certain people such as the Teamsters and Chauffeurs' Union and the Railroads, and the matter was argued orally before the entire Interstate Commerce Commission. And then along on the eighth of May, 1951, the order complained of was made. That order, may it please the Court, was adopted by a divided vote of the Interstate Commerce Commission, only seven of the eleven members supporting the order. Commissioner Lee, Chairman of the Division Five, composed of three members and assigned to Motor Carrier cases, and which had unanimously approved the order of June 26, 1950, in a separate opinion, which is set out in our complaint, dissented from these harsh, drastic and unlawful provisions of the order. Commissioner Rogers, also of Division Five, and Commissioners Knudson and Mitchell wouldn't vote at all. They refused to participate in the matter in this proceedings.

We are contending that the order of the Commission is contrary to law, violates the Constitution of the United [fol. 280] States and is made without any authority of law whatsoever. We are not going to appear here asking this Court to substitute its judgment on matters of evidence which are properly within the provisions of the Interstate Commerce Commission. We think we know what the law is on that subject, but I want to discuss this evidence just briefly because I do not want this Court to get the impression that we acquiesce in the conclusions arrived at concerning the evidence. And I will be very brief and I think it is much in point. The order complained of bases its findings that these rules and regulations should be adopted principally upon an Appendix D attached thereto which is a summary of Exhibit 2 before the Commission which in turn was a summary of certain confidential reports that

Mr. Blanning, their witness, received and which we were never permitted to examine. That Exhibit D was couched in somewhat more dignified language than Exhibit 2 and the testimony of Mr. Blanning incorporated something that you are probably going to hear a good deal about, and I am going to tell you our position about it right now. Mr. Blanning, for some reason or other, several hundred times in his testimony, referred to people who lease ve-
[fol. 281] hicles as "gypsies", a term of contempt. And I want to read just a sentence or two from my brief because I chose my words and weighed them well; and this is our position about that, regardless of what you hear about it. Witness Blanning interjected the appellation of "gypsy" into this record in referring contemptuously to the owners of motor vehicles who lease their vehicles to motor carriers. Many of these men who lease equipment they own are veterans of World War II and all, we believe, citizens of the United States. We regret that a government official and head of one of the Bureaus of the Defendant Commission saw fit to use such irresponsible language many times in his testimony. This characterization by Witness Blanning was avidly seized upon for frequent use by those in this case who rely upon name calling to support their position since they lack substantial evidence or sound legal arguments. No doubt it will be used frequently by some in this Court, including the Defendant Commission, but we do not propose to dignify the matter by discussing it further, for we believe this Court will give name-calling no weight or consideration whatsoever. Now, Mr. Blanning, in getting this information, where they use this in-
[fol. 282] temperate language, sent out a letter to the field for his people like a man who is down here in the corridor of this building and we were able to get a copy of that and it's reproduced in full in the appendix in our brief. We put it in evidence. I want to read just one quotation from it, and if you are interested, you can read the entire letter as an appendix to our brief. After sending this thing out directing them to get only unfavorable information about leasing, it was not a fair and impartial survey. He asked them to get only the bad stuff and bring it in to him and set a deadline in the letter when he should do it. And

then he said through his deputy, Mr. Qualls, "In addition, . . ."; and I am quoting, "Director Blanning desires to present in evidence a statement of the undesirable results of existing leasing practices. As any regulations which may be adopted will adversely affect many motor carriers financially, it is desirable that the record show reasons in support of adoption of regulations which will have that effect." May it please the Court, I don't know what you think about it; I think it is unconscionable conduct on the part of a government official and I think it invalidates this order from stem to stern, as I argued in my brief, [fol. 283] and I hope you will read that entire letter. Now all these abuses and violations of law which, they say, are occurring wholesale throughout the United States, are based upon that letter and the information which it forced —this field forced to gather up. We say that everyone of those things they complain about, even if they were as widespread as they indicate in the order or either violations of present law, violations of existing rules or regulations to the Commission, and the only reason they occur is because their enforcement is broken down. And as I pointed out in the brief, Congress, in 1950, gave them eleven million dollars ($11,000,000) to enforce the law, but they don't want to use that for that purpose. They want and did adopt an unlawful order trying to put us out of business because they can't enforce their own present existing rules and regulations and law. Now in connection with whether or not these Plaintiffs and respective carriers are engaged in these practices that they talk about—I don't ask you to rely upon me; I ask you to rely upon Judge Lee, Chairman of Division Five of the Motor Vehicle Division, an ex-judge of the Supreme Court and a man whom I believe knows how to weigh evidence. In his dissenting opinion which only seven of them voted for this unconscionable order, Judge [fol. 284] Lee said, and I am quoting, "It appears from the evidence of the record that the majority of the owner-operators are not guilty . . ." (may it please this Court) ". . . of the abuses which the prescribed rules are designed to eliminate." Now that is all I care to say about the evidence in this case because we are going to rely upon legal argument and not ask you to weigh this evidence;

but I wanted you to know how it was obtained and know something about what a man whom I regard as one of the outstanding members of that Commission had to say about that—about it. We insist that this order complained of is invalid because it is made without any power on the part of the Interstate Commerce Commission to make it; not only that, but it violates express provisions that—provisions in the law telling the Commission that it cannot interfere with a matter of this kind. Section 308 (a) and 308 (b) of Part II of the Interstate Commerce Act relates to the issuance of certificates of public conveyance and necessity and contract carrier permits such as these certificates which are in evidence over here. Those are the key stone and corner stone of a motor carrier's operation of that—his authority. Now Congress, when it passed this law, in the provision of where the certificate should be issued—[fol. 285] and I refer to Section 308 (a)—after telling certain things that should occur, and I am only omitting reading it now, not because it is not pertinent but because I want to pass on fastly—put a proviso on there, and that is about the certificates:

> "Provided, however, that no terms, conditions or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require."

The very thing that we do, supplement our equipment when the shippers call upon us by leasing it, Congress said the Interstate Commerce Commission shall not abridge. They paid no attention to that, may it please the Court. They went on and made this unlawful order anyway and attempted to justify it by some peculiar operations. In the first place, they had already passed upon the mechanics of this proviso in some of their decisions before they started out on the program of confiscating our property, in several cases, and I will read only one. Ten M.C.C. 266 at page 270, the Defendant Commission discussing this very proviso on that—I am talking about said—

[fol. 286] "This prohibition protects the right of the

carrier to expand not only its 'equipment', but also its facilities. The only purpose of such expansion is to enable the carrier to provide more service, and this is very clearly indicated by the words 'as the development of the business and the demands of the public shall require.' It follows that 'terms, conditions and limitations' in the certificate restricting the service of the carrier would be wholly inconsistent with this proviso."

They said the same thing. What do they do, may it please the Court? They admit they can't write it into our Certificate and Congress said they couldn't, but they say they have a right to come along and make a rule which nullifies the certificates under which we operate and which we received by grant of Congress.

Now, the Supreme Court of the United States has had this matter up before it in the United States of America and Interstate Commerce Commission vs. N. E. Rosenbloom Truck Lines, Inc., 315 U. S. 50, 62 S. Ct. 445. This was the situation. There were certain people who engaged in [fol. 287] leasing vehicles to common carriers, such as these plaintiffs, who made an application to the Interstate Commerce Commission under the Grandfather Clause of the Act, seeking to obtain certificates for themselves claiming that by reason of having leased vehicles to a common carrier, they had somehow had the mantle of a common carrier dropped around their shoulders.

The Supreme Court got an Order from the Commission in which it denied the certificates and said the common carrier who did the leasing of the vehicles was the only one entitled to it. In that connection, I want to read from the Supreme Court of the United States . . . .

"Appellees make no contention that they were common carriers during the period in question and we are clear that they were not, for the Congressional intent to avoid multiple 'grandfather' rights on the basis of a single transportation service is equally applicable to prevent appellees from being considered either as contract or as common carriers within the meaning of the Act. The reasonableness [fol. 288] of this interpretation of the Act is apparent. Since appellees' operations, namely, serving the common carriers, on the critical date did not make them carriers'

within the meaning of the Act, and thus subject to regulation under it, it follows that they are free to engage in such operations without securing the authorization of the Commission."

The Supreme Court has said these people who lease for us, whether it be for a trip lease, or for twenty years, are free to do it; yet, the Interstate Commerce Commission tries to take that right away.

Now, in an attempt to sustain their untenable and unlawful position, the Commission engages in one of their favorite practices, delving into the Congressional Record.

In Helvering v. City Bank Farmers Trust Company, 296 U. S. 85, 56 Sup. Ct. 70, L. Ed. 62, the Supreme Court in considering the matter of statutory construction indicated that where there is no doubt as to the meaning of the words used, the Court is not at liberty to construe the language [fol. 289] or refer to committee reports involved in the legislative history of a statute. In that connection the Court said:

> "We are not at liberty to construe language so plain as to need no construction, or to refer to committee reports where there can be no doubt of the meaning of the words used."

In spite of that, the Commission attempted to justify itself by a partial review of the legislative history. We have in our brief a complete review of the legislative history and will not take time to repeat it here, but we respectfully submit to the Court that it sustains our position one hundred per cent.

Now, since I have indicated what the law tells them they can not do, I want to call to the attention of the Court the sections of the law under which they claim they had a right to operate and make this Order which we complain of. They now rely on Sections 302(a) and 304(a)(6).

Section 302(a) is as follows:

"(a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged [fol. 290] in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation,

and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission."

Now, they couldn't find anything in there, so the Defendant Commission in its Order makes this admission:

"It is true that the motor provisions of the Act, at least since the Transportation Act of 1940, do not refer specifically to the leasing of equipment by such carriers."

So, they have to imply it; they have to read it into it, and they engaged in what I will describe as a feat of rhetorical gymnastics because in this Order complained of they wrote words in the law that aren't in there. Now that is impossible to do.

There are such cases as the W. A. Hover & Co. v. Denver & R. G. W. R. Co., 17 F. (2d) 881 at 884, where the Court said:

[fol. 291] "The Commission can not make or modify the law. Executive and administrative departments of the government are required to keep within the limits of the power granted them by Congress."

I have a number of other cases of that kind. In Chicago, M., St. P. & P. R. Co. vs. U. S., et al. (D. C. 711, 1929), 33 F. (2d) 582, 587, aff'd 51 S. Ct. 159, it is stated:

"The Commission is a body of limited Jurisdiction * * * its powers to regulate cannot be so exercised as to advance any policy which does not have its origin in the statute."

May it please the Court, there is not one word in this Act from beginning to end that says they have any authority over leasing whatsoever, so it is an implied power. At one time the Defendant Commission had no right to fix rates for the future, but they attempted to read that into the law and imply it, but the Supreme Court knocked down the Order. In I. C. C. v. Cincinnati N. O. & T. P. R. R. Co., 167 U. S. 479, 17 S. Ct. 896, the Supreme Court indicated that such powers could not be implied, saying:

[fol. 292] "The grant of such a power is never to be implied. The power itself is so vast and comprehensive, so largely affecting the rights of carrier and shipper, as well

as indirectly all commercial transactions, the language by which the power is given had been so often used and was so familiar to the legislative mind, and is capable of such definite and exact statement, that no just rule of construction would tolerate a grant of such power by mere implication."

Congress later gave the Commission that power. The Defendant Commission, in an attempt to justify its position, relies principally upon two cases, in the United States v. Pennsylvania R. Co., 323 U. S. 612, the so-called Seatrain case, and the United States v. Grimaud, 220 U. S. 506. We have discussed those in our brief, and pointed out that in those instances the power exercised by the Interstate Commerce Commission in one case and by the Government Forestry Service in another, were specifically spelled out in the Act and were not implied at all.

[fol. 293] Now, what we have said here relative to the lack of power of the Commission is particularly pertinent when applied to the situation that is created by the provisions of the Order which prohibit carriers such as these plaintiffs from leasing vehicles and paying for it on a percentage of the revenue. Exactly these same situations have been before the Interstate Commerce Commission and the Courts, in connection with Part I of the Interstate Commerce Act, covering the regulation of rail carriers.

In Ellis, and that doesn't happen to be me, vs. Interstate Commerce Commission, 237 U. S. 434, 58 L. Ed. 1036, I want to quote briefly.

"If the price paid to the Armour Car Lines was made the cover for a rebate to Armour & Company or if better cars were given to Armour & Company than to others, or if, in short, the Act was violated, the railroads are responsible on proof of the fact. But the only relation that is subject to the Commission is that between the railroads and the shippers. It does not matter to the responsibility of the roads whether they own or simply control the facili-

[fol. 294] ties, or whether they pay a greater or less price to their lessor."

Also, in General American Tank Car Corp. v. El Dorado Terminal Company, 308 U. S. 422, 84 L. Ed. 361, the Supreme Court, at page 367, said:

"Freight cars are facilities of transportation, as defined by the Act. The railroads are under obligation, as part of their public service, to furnish these facilities upon reasonable request of a shipper and therefore have the exclusive right to furnish them. They are not, however, under an obligation to own such cars. They may, if they deem it advisable, lease them so as to be in a position to furnish them according to the demand of the shipping public and, if the carriers do so lease cars, the terms on which they obtain them are not the subject of direct control by the Interstate Commerce Commission. If the carriers pay too much for the hire of such cars the Commission may, of course, refuse to allow them to reflect such excess cost in their tariffs. The lessor of such cars to a railroad, however, is not itself a carrier or engaged in [fol. 295] any public service. Therefore its practices lie without the realm of the Commission's competence."

Now, it has been held and I have citations to that effect in my brief, which I will not read here, that Part I and Part II of the Act follow right along and are of similar import and similar interpretation. I have attempted to point out briefly wherein the Commission exceeded its power and had no right to make the Order complained of.

I want to turn our attention to another matter and upon which we greatly rely. This Order is contrary to U. S. Code, Title 49, in the policy clause of the Act immediately preceding Section I, in that it jeopardizes the National Defense.

The Interstate Commerce Commission, in the Order complained of, relies a great deal upon the purpose clause of this Act although leasing is not mentioned even remotely therein, but the National Defense is, and it is the primary purpose of this law; although the Interstate Commerce [fol. 296] Commission in digesting the principal portions of this Act in the Order complained of, omitted any reference to the National Defense whatsoever. It may not be important to the Defendant Commission but it is important in the law because the law says so.

Everything that is prohibited now by this Order, or virtually everything of any importance, not only were these plaintiffs doing but they were ordered to do it by the

Federal Government during the critical period of World War II.

We have set out, as an appendix to our brief, the orders of the Office of Defense Transportation which ordered us to engage in these leasing practices, ordered us to use vehicles to the limit of their capacity, and those orders were promulgated by the Honorable Joseph Eastman who at that time was Chairman of the Interstate Commerce Commission, and whom I will say, without fear of contradiction, has been the outstanding member of that Commission since its organization in 1887 down to date. He promulgated those rules.

[fol. 297] Now, the Defendant Commission seems to have forgotten that it is just as important now as it was then At the very time they were denying our petition for reconsideration of this case, President Truman went before the Congress of the United States in his mid-year economic message, and I have quoted it to some extent in our brief, but I will quote it briefly here. The President said on July 23, 1951, just three days before they denied our petition for a rehearing:

"We are engaged in a long-term effort. The need for military strength did not begin with the Korean War. Nor will it end when and if the fighting in Korea ceases."

That is what he said, so whether they enter into an armistice over there or not hasn't anything to do with the National Defense. Now, the Defendant Commission should have known that on December 16, 1950, the President of the United States declared a national emergency in this country. That proclamation is cited in full as an [fol. 298] appendix to our brief. We hardly believe that any additional statements, corroborating the President of the United States concerning the National Emergency which now exists, are necessary, but if the Defendant, Interstate Commerce Commission, should perchance take the position that it was not acquainted with the situation, as repeatedly outlined by the President of the United States, we have only to refer to the language of the Defendant Commission itself, what they said in this annual report on those pages which were put in evidence.

Under the caption "Bureau of Motor Carriers", and that is November 1, 1950, here is what they said:

"Because of the international situation and the program of substantially enlarging our national defense facilities, the adequacy of motor-transportation facilities as reflected in the last report has materially changed. Generally, the motor carriers are now transporting quantities of traffic which almost absorb their capacity and in some areas the available facilities have been unable to move all traffic offered without some delays. Present indications are that [fol. 299] as the defense program progresses, the amount of traffic which will require motor transportation will increase. In order to cope with the situation and deal with problems as they arise, the field staff has organized industry committees in those localities in which traffic congestion is prevalent in an effort to deal with transportation problems on a local level and for the purpose of advising this Bureau with respect to any problems which cannot be solved. Military demands may cause shortages of equipment and personnel in the motor-carrier industry."

This is what they said last November:

"It is our plan to compensate for any such deficiencies by fostering more efficient utilization of facilities and employee training programs."

There is more, but I will not read it. What did they do after they reported that to Congress, because this was under the law? They made an Order providing for the least utilization of available motor vehicle equipment in a national emergency at a time when copper, brass and steel [fol. 300] is allocated, and they can hardly get enough to build more of them, at a time when this country's life is at stake, as repeatedly said by the President of these United States, and this Defendant Commission would seek to impose rules and regulations which would make these plaintiffs here run empty trucks from New York City to Chicago, for example.

We say that the Order violates the provisions of this Act; that it jeopardizes the National Defense, and should be stricken down by this Court for that purpose.

Now, there is something else in the National Transportation Policy to which I would like to direct your attention briefly. I have the quotations but I can paraphrase it.

It says that they are to provide the regulations so as to provide that there will be no discrimination between the forms of transportation. We allege here, and it is true, that this Order is invalid because they have exempted rail carriers when they operate motor carriers as motor vehicle [fol. 301] operators, from the provisions of this unlawful Order.

In the first place, the discrimination occurs in this wise and we forced the admission from Witness Blanning and it is in the record over here. He admitted when you go down and look at a freight train, there are cars in there of every railroad in the United States, and probably some from Canada and Mexico, and that the railroads don't own any of them. A lot of times they don't own the tender. They are all leased from some other source. That was done and admittedly that was done to promote the free flow of interstate commerce.

They say we can't lease at all. That is the reasonable import and final effect, but that isn't all. That is discrimination enough. The rail carriers, particularly where they have abandoned rail service to the public, for whatever reason it may have been, have gotten certificates from the Interstate Commerce Commission to operate as motor carriers under the very law that we are talking about here now. The Railway Express Company does the same, and [fol. 302] every one of those operations in which they use leased equipment to a tremendous extent was exempted from the provisions of this unlawful and unconscionable Order, and how did the Commission justify it? I hope I can find the quotations.

This is all they said in justification, on sheet 42 of the Order: "No serious objections were raised by any parties to the proposed exemption of vehicles used in rail or express service."

Now, it wouldn't make any difference, as I view it, under the law whether anybody raised objections to it, or raised serious objections to it. It is contrary to the transportation policy and is void, but I want to say to this Court that in

the very first pleadings that I personally had an opportunity to file with the Defendant Commission, the brief after the Examiner's hearing, and before the Examiner's report, I did call attention to this situation. I did raise objection to it, and either the Defendant Commission didn't read our brief or they forgot about it in the interim [fol. 303] between the time they made this statement here and the Order, or else they didn't regard the language which I used as strong enough or intemperate enough as Mr. Blanning uses, to regard it as a serious objection, because I tried to couch my objection in dignified language, even in referring to the rail carriers. I referred to them as they are known and not by some name.

We are objecting to it now and we say the Order is invalid and should be stricken down because of this unlawful and illegal exemption.

I now want to call attention to the situation in which this Defendant Commission violated the provisions of the Administrative Procedure Act. This Court is well aware things got so bad down in Washington with all these bureaus, and they got so autocratic and they got to doing so many things without giving people due process, that the Congress of the United States enacted what is known as an Administrative Procedure Law which indicates some of the things that have to be done by boards and bureaus and [fol. 304] commissions, such as the Defendant Commission, in their dealings with the public of the United States.

Now, the Defendant Commission has always taken the position that they weren't covered by the Administrative Procedure Act, and didn't have to comply with it at all, and so I mention this merely to get their attitude on the subject in the first instance, although the Administrative Procedure Act requires that cases before these boards be heard by an impartial examiner who is qualified under the Administrative Procedure Act, and the Supreme Court has so held in that Chinese immigration case. Nevertheless, they refused to do it and they conducted hundreds and thousands of hearings all over the United States, and some of my clients were in many of these, and it is going to cost us and the people of the United States hundreds and thousands and millions of dollars to retry those cases.

One of them is or was taken to the Supreme Court, the Riss case, where it was indicated they have to comply with the provisions of the Administrative Procedure Act. I refer to that to get their attitude. In the case at bar, they [fol. 305] made a last-minute switch and they resigned an Examiner who gave token compliance to that provision.

When you are going to have a rule making session, the law requires the proponent of the rule has the burden of proof, and I have the direct citation here in my brief. Now, we take the position that provision of the law was not complied with because these rules and regulations which they promulgated in the Order of January 9, 1948 giving notice of these proceedings were contradictory; one did one thing and another was diametrically opposed, and we say you can't take the burden of proof unless you are proposing something affirmatively.

In his answer to this Court, the Defendant, Interstate Commerce Commission, has denied that that is a fact, but let us see what the record shows.

Mr. Blanning, their witness, who prepared these rules, stated that these rules were, and I am quoting "trial balloons", and "stalking horses". That is not my language but Mr. Blanning's language. I asked him, and this is [fol. 306] some cross examination I engaged in, if it was a fact he was not recommending any of the rules and I am not quoting for him, but he said he wasn't, and he further said, "I am not recommending that anybody be subjected to these regulations." Then he said if he were going to make any recommendations, he would make them before the record closed, and he never made any, because, as I show in my brief, he was the last witness, and the last thing that happened on the stand, he said he didn't have anything further to say and then, realizing that they violated the Administrative Procedure Act, after the record closed, after the right of cross examination or rebuttal evidence to what rules were actually proposed, because they never proposed anything affirmatively, they had this Bureau of Motor Carriers, headed by Mr. Blanning, which by the way, was appearing in this case as though a separate entity, and you would have thought they didn't have anything to do with it, with the Inter-

state Commerce Commission, but they were their own employees.

[fol. 307] They had them file a brief and in that brief they recommended the adoption of certain rules, and the Commission now, to meet the legal objection which we raise, in its Order said, "On brief, the Bureau took a definite position, and now advocates the adoption of certain specific rules."

We respectfully submit that the provisions of the Administrative Procedure Act relative to rule making were never met here, and you can not meet the burden of proof when you are not advocating something, and since the Defendant Commission was the one that put out this notice in the Federal Register, they were the ones who had this burden under the law. It doesn't make any difference how many other people may have come in with proposed rules and regulations. They were just innocent bystanders as far as the law was concerned. The law puts the burden upon the proponent, the Federal Agency that is going to establish the rules, to tell the people of the United States through the Federal Register of what rules they propose so you can meet the issue. Yet, these plaintiffs and the other people in this case, were made, without any choice [fol. 308] of their own, sole respondents. We were made respondents where the issues were "trial balloons" and "stalking horses", to use their language

I now want to direct the attention of the Court, if I may, to another matter which we feel very strongly upon, and that is the fact that this Order complained of, which prohibits these lawful practices in which we have been engaged for years, will confiscate our property, take it without due process of law in violation of the Constitution of the United States.

In that connection, the Defendant Commission denies it. I want again to call to the attention of the Court, and I trust at your convenience you will read that letter Mr. Blanning wrote, where he sent out to get the evidence, to beat the bushes to get information to injure us financially in that letter. In that letter, the planned confiscation of our property is very obviously set out. That is in one breath in secret instructions to their field force, they were told

to bring in this undesirable information; this information [fol. 309] about matters that would adversely affect us financially, but when they go before the public in the Federal Register, they don't adopt anything there as they were required to do by law.

In our Complaint, we set out certain allegations as to the value of the property of these plaintiffs, that we have twenty-six million dollars invested in terminal facilities, equipment and other matters devoted to serving the shipping public. To my surprise, the Defendant Commission in its answer says it is without information on those subjects, and yet, insofar as it relates to the year 1950, may it please the Court, every word of it is set out in these documents over here. How, in good conscience, can the Defendant, Interstate Commerce Commission, come before this Court and say they were without information when they require us, under provisions of the law, to give them that information, and in the annual report forms right over there; they threaten you with prosecution if you don't make the report, and if you don't tell the truth about it, and verify it under oath, and they say they didn't know [fol. 310] anything about it at all.

Now, I believe that these statements on the part of the Defendant, Interstate Commerce Commission, that we represent by these plaintiffs an infinitesimal part of the motor carrier industry of the United States is refuted by those documents and that companies that have income revenue derived from the transportation of freight of almost one hundred and fifty million dollars a year, and have over twenty-six million dollars invested in their property, they are not any fly-by-night concerns, although I will say this, that I believe the humblest citizen of the United States, if he owned one truck, would have just as much right in this Court as we do, but I want to point out that their attempts to minimize the amount of damage which will be done to us by saying they are an infinitesimal part of the trucking industry is discounted and disproved by their own reports which we have placed in evidence here.

Now, those situations continue on through the brief, and [fol. 311] I am not going to take much more time except

to call attention to one matter here on my direct argument.

These plaintiffs in some instances, operate leased equipment exclusively. One hundred per cent of their revenue is derived from leased equipment, and as alleged in the Complaint, and it is proved over there because we report to them that it is derived from the use of leased vehicles. Those are these vehicles that are leased on a long-term basis and are paid for generally by dividing on a percentage basis the revenue received in which they say we can't do it, and at this very moment over in the State of Ohio hundreds of employees of one of these plaintiffs is on strike because we tried to abridge our contracts and charge on some other basis than a percentage of the revenue, and they laid down their tools, so to speak, left the wheel, and there is not a wheel turning over there as a result of trying to do what the Interstate Commerce Commission says we have to do.

We say that things like that confiscate our property and [fol. 312] that they are inimical to the United States of America and the National Defense. Matters such as this case have been frequently referred to in litigation before the Supreme Court of the United States and I was somewhat surprised this morning to hear Mr. Reidy, in an attempt to justify some position he was taking, refer to the St. Joseph Stock Yards Case. I have quoted it somewhat in detail in the closing portion of our brief, and I am not going to read it all, but I want to read just a couple of sentences which I have underlined which are the keynote of this case, and I quote from the Supreme Court of the United States:

"Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient."

That is the end of the quotation. In referring to political demands, I am not referring to partisan politics, but I am referring to the feature in this case which may account for [fol. 313] Commission refuse to vote for this unconscion- the fact that certain members of the Interstate Commerce able Order.

Gentlemen of the Court, I appreciate this opportunity to be heard. There are many other matters which we have

discussed in our brief, and the matters discussed here are set out in considerably more detail there. I earnestly request that you give it your consideration.

We feel very deeply about this case. We feel that the Order was wrong, beyond the power of the Defendant Commission and that we are entitled to the relief which we seek at the hands of this Court.

Thank you for your consideration.

Judge Kerner: Who is next?

Oral Argument for Secretary of Agriculture

Mr. Cockrum: Henry A. Cockrum, representing the Secretary of Agriculture of the United States.

May it please your Honors, the Secretary of Agriculture of the United States participated in the administrative proceedings before the Commission from which this action arose on behalf of the approximately twenty million farm families constituting the agricultural community of the [fol. 314] Nation. He there and here seeks to obtain as economical, expeditious and flexible transportation services in the marketing of agricultural commodities and farm supplies as it is reasonably possible to attain under the so-called agricultural commodity exemptions contained in Sections 203(d), 4(a), 5 and 6 of the Interstate Commerce Act.

Some indication of the strides which agriculture has made in the marketing of the products of agriculture since 1935, which was when the Federal Motor Carrier Act was enacted, and which is now Part II of the Interstate Commerce Act, is shown in the forepart of our brief, the original and the copies of which have been already passed up to your Honors.

The Secretary is interested in the so-called trip leasing phases of this case. In our brief, we set forth in detail our arguments in which we contend that the Commission is without authority to issue the repressive leasing rules here in controversy.

We argue, secondly then, assuming that the Commission has authority, these particular rules are arbitrary and un- [fol. 315] reasonable. We there refer to the statement of the late Commissioner Eastman, to whom Mr. Ellis has already referred, to the statement of Mr. Eastman when he

was speaking of the meaning of Section 202(b) of the Motor Carrier Act of 1935, which is now Section 202(a) of the Interstate Commerce Act.

Now, the Commission places considerable reliance upon that particular section which is the first substantive section of Part II of the Act, for its authority to issue these particular restrictive rules. Mr. Eastman, however, said back at the very beginning of the Motor Carrier regulation, and I have his full statement copied at pages 8 and 9 of my brief, that the "Procurement of and the provision of facilities in Section 202(a) relates to brokers and not to motor carriers at all."

The statement in the decision of the Commission, which appears at Sheet 36 of Appendix A of the original Complaint and Petition for Injunction in this case, vividly demonstrates the approach of the Commission in its administrative proceeding as it involves the transportation of [fol. 316] agricultural commodities and brings us face to face at the very outset with one of the important issues in this case.

The Commission there states, and in order to not read it, I should like to paraphrase it or summarize it, that the Commission-regulated carriers serving Florida generally do not transport fruits and vegetables, and I say naturally so because these are exempt agricultural commodities, that nearly one hundred percent of this fruit and vegetable traffic is handled by exempt carriers specializing in transporting such commodities in refrigerated or semi-refrigerated equipment; that Florida agriculture is said to be dependent upon that service and that Commission-regulated carriers domiciled in the north lack proper authority or equipment to transport the fruits and vegetables from Florida on return trips to the north, and apparently are also willing to have a good share of their southbound traffic transported under lease by exempt agricultural haulers in order to avoid their empty return movements to the [fol. 317] South.

Now, the Commission goes on to state, and this is the nub of this whole point, it states in the two final sentences of that paragraph that "This is not a healthy condition from the standpoint of regulation" and that "the trans-

portation of general commodities should be performed by authorized Commission-regulated carriers."

This, we submit, is an attempted outright nullification by the administrative agency of the agricultural commodity exemptions in Section 203(b), 4(a), 5 and 6, which expressly relieve motor carriers transporting agricultural commodities from the certificate and permit requirements of the Interstate Commerce Act. It isn't for the Commission to say that this is or is not a healthy condition from the standpoint of regulation or that exempt agricultural commodities should be hauled by Commission fully regulated carriers of general commodities.

Congress resolved both of those issues, we submit, when it passed the Motor Carrier Act in 1935, and that is now Part II of the Interstate Commerce Act. Congress recog- [fol. 318] nized the necessity for the utmost flexibility in the marketing of the products of agriculture and specifically exempted their transportation from all but the provisions of Section 204 of the Interstate Commerce Act relative to qualifications and maximum hours of service of employees and safety of operations or standards of equipment.

The Commission must construe and apply all sections of the Act so as to give effect to each section in carrying out the over-all legislative intention, and it may not substitute its judgment for that of Congress.

Now, as stated by the Circuit Court of Appeals in the Fifth Circuit in the Dunn case, and we refer to it in our brief, it has been recognized to obtain certificates of public convenience and necessity, and permits from the Commission involves delay, inconvenience and expense, and that Congress intended by the exemption provisions to free the transportation interstate of agricultural commodities from the general regulation of the Interstate Commerce Commission by the Commission. This statutory exemption [fol. 319] attaches even though the carriers may transport non-exempt commodities on back-haul movements. That has been held in the Service Trucking Company case referred to in our brief and also in the Dunn case there referred to.

As stated by the Supreme Court in *U. S.* vs. *Carolina*

State Freight, "Empty or partially loaded trucks on return trips may well drive the enterprise to the wall", and that statement applies with equal force to the agricultural haulers and Commission fully regulated carriers.

Furthermore, as stated in the F. & F. truck leasing case, reported in 78 Fed. Sup., page 19, "The practice by Commission fully regulated carriers of utilizing equipment of owner operators for single movements does not impair necessary public regulation."

Now, as of February 1, 1950, Commissioner Rogers of the Commission estimated that these agricultural commodities, the agricultural commodity haulers approximated 40,000 in number or twice the number of Commission fully regu- [fol. 320] lated motor carriers of property, and that these forty thousand haulers of the products of agriculture operated about one hundred and fifty thousand units of equipment. These haulers and the other owner operators who sometimes lease their equipment to Commission regulated carriers for single movements have been deliberately called "gypsies". Mr. Ellis has referred to the case already. They have been called "gypsies" by numerous parties in this proceeding.

As stated by the Commission in its decision, many of these persons are world war II veterans who, when returning from Service, found it difficult to enter any other enterprise, and I am sure to the Commission regulated carriers and to the shipping public, generally, these persons are small business men who render an indispensable service in the field of interstate motor transportation.

We submit that their services should be preserved in accordance with our traditional policies of protecting small business rather than destroy it, as the Commission [fol. 321] here proposes to do. These agricultural haulers can not stay in operation if they are forced by the Commission to run their equipment empty say from the markets in the north and in the east to the citrus producing belts of Florida.

We believe, further, that the Commission's rule abolishing this long standing trip leasing practice is also in plain derogation of the National Transportation Policy contained in the forepart of the Interstate Commerce Act.

Imposition of these rules must inevitably result in unethical and inefficient operations by both the agricultural haulers and the Commission regulated carriers. We believe that that is contrary to the economical and efficient service and sound economic conditions in transportation sought to be fostered by that National Transportation Policy because of the resulting increased cargoless mileage.

To illustrate, one Commission-regulated carrier domiciled in Tampa, Florida, referred to in the decision of the Commission, estimated that it alone saved about $188,000 in 1947 and $150,000 in the first nine months of 1948 by [fol. 322] trip leasing equipment belonging to the exempt agricultural haulers.

Especially imperative is it that we not condone such a prodigal waste of the nation's transportation facilities during a period of national emergency such as the present. Mr. Ellis has already referred to that and I shall not refer to it further myself. We have referred to it at some length in our brief. I might say only this, that the necessity to consider the nation's resources at the present time is likewise found in the releases of the Defense Production Administrator who is now allotting such materials in short supply as steel, copper and copper alloys and aluminum to claimant agencies and programs including the motor vehicle program.

We believe that the Commission in the circumstances presented in this case, in which it prescribes the leasing rules which do constitute such a prodigal waste of the nation's transportation facilities, actually clouds the National Defense program.

The increased transportation charges which both the [fol. 323] agricultural commodity haulers and the Commission-regulated carriers of necessity must assess the shipping public to compensate both types of carriers for the resulting increased cargoless mileage, if the prescribed rules become effective, will be inconsistent with the establishment and maintenance of reasonable charges for transportation services which the policy seeks to encourage.

Imposition of those rules likewise fails to recognize and preserve the inherent advantages of each mode of transportation, including the expeditious and flexible trans-

portation rendered by the approximately forty thousand comparatively small exempt carriers of agricultural commodities and farm supplies sought to be preserved under that transportation policy.

It is the duty of the Commission, and we contend that that duty is wholly unfulfilled in the administrative proceeding before the Commission to observe such controlling expressions of policy.

Judge Kerner: Specifically, what do you think ought to be done with the Order?

[fol. 324] Mr. Cockrum (For Dept. of Agriculture):

We believe this particular Order as prayed for in the complaint of the original Complainants here, and also in the Complaint filed by the Secretary of Agriculture, should be suspended and enjoined permanently.

Judge Kerner: Permanently? In other words, set aside, is that right?

Mr. Cockrum (For the Dept. of Agriculture):

Set aside, yes, sir.

Judge Kerner: I didn't quite understand what you meant by suspend. You really meant to set it aside?

Mr. Cockrum (For the Dept. of Agriculture):

That is right. It appears to us that the problem with which the Commission here seems to be confronted is one of policing and enforcing the present law, including the Commission's rules and regulations as regards safety, hours of service and comparable matters, which it is expressly empowered to prescribe under Section 204(a)(1) of the Act, as implemented by Section 204(a)(6) of the Act.

[fol. 325] If the present safety, hours of service and other comparable rules and regulations are inadequate, then we submit that the Commission should prescribe appropriate rules and regulations respecting those matters of safety, hours of service and other such matters rather than to outlaw this long-established and lawful practice of trip leasing equipment.

Moreover, there is no need for the railroads or the labor unions or the Commission itself in this or in other pending proceedings involving this same Order of the Commission to attempt to confuse and befuddle the issues by talking of alleged unlawful or questionable practices of agricul-

tural haulers or other than owner operators, rather, I should say, agricultural haulers or other owner operators. Neither is there any unlawful competition provided by such haulers and operators.

Those persons, and I would like to make this very clear, those persons, when they are transporting commodities for which operating authorities are required, are serving Commission-regulated carriers. The operations are entirely [fol. 326] the operations of the Commission-regulated carriers and any competition experienced is competition between Commission-regulated carriers. There is no such thing as competition between Commissioned, or Commission-regulated carriers and owner operators.

As demonstrated in our brief, the practice by Commission regulated carriers of leasing equipment of agricultural haulers and the other owner operators on a trip-lease basis is wholly lawful and the Commission is expressly forbidden under the Act to ban, condemn or outlaw that practice.

Now, in closing, I should like merely to state that the Secretary has been requested by the American Farm Bureau Federation, the National Council of Farmer Cooperatives, the National Farmers Union, and the National Grange, parties to the administrative proceeding, to state to this Court that the Order and prescribed rules of the Commission here under review will adversely affect the membership of such organizations in the marketing of their products and that such organizations fully support the [fol. 327] position here taken by the Secretary.

Now, I would therefore like to join Mr. Ellis in urging that this Court suspend, enjoin, annul and set aside the Commission's leasing rules here under consideration, or under review.

Judge Kerner: Who is next?

ORAL ARGUMENT FOR NATIONAL INDUSTRIAL TRAFFIC LEAGUE

Mr. Burchmore (For the National Industrial Traffic League): I appear this morning on behalf of the National Industrial Traffic League, Intervening Complainant, which is a nation-wide organization of shippers and users of transportation.

The National Industrial Traffic League numbers among its members most of the shippers of the nation, probably

representing 80 percent of all the traffic moved by rail, by truck and by water.

The League appeared in the proceedings before the Commission from their inception, and the League and its whole membership did so because it was gravely concerned with the matter of principle involved in the case before the Commission.

[fol. 328] Broadly speaking, the League is interested in preserving and fostering sound transportation, economical transportation and the application of sound principles of regulation by the Commission.

In this particular proceeding, the League was specifically interested that the Commission should not undertake to enlarge upon the interpretations of the Statute or attempt to provide by regulation something which the statute did not give the power to provide or which might be contrary to the express provisions of the Statute.

We appear in this case in support of the Complainants as Intervening Complainants, and we ask this Court to set aside and enjoin the Commission's Order temporarily and permanently. We believe the Order is invalid, is an exercise of power which the Commission does not have; that it is beyond the jurisdiction of the Commission and that they have no power to issue these or any other regulations limiting the right of carriers to lease or otherwise procure equipment by means which are otherwise lawful.

[fol. 329] This Commission administers the Act or the Statute known as the Interstate Commerce Act. Members of this Court are familiar with that Act from other proceedings, but, broadly speaking, it is divided into four main parts, the first of which being the oldest, and many times amended, which relates to rail transportation; the second part to motor truck, and part three to water carriers and part four to freight forwarders. Many sections of the different parts are interchangeable. That is, they relate to more than one type of carriage by reference in other parts of the Statute, but, broadly speaking, Part II contains all the provisions relating to conditions, relating to Commission powers over motor carriers.

If the Court will examine the Statute section by section, you will find that there are nine and only nine references

anywhere in the Statute to regulations by the Commission with regard to motor transportation.

First is the general statement in Section 202(a) of the Act which simply states that the provisions of the part apply to transportation by motor carriers, and that the [fol. 330] regulation is vested in the Commission. The word "regulation" here is used synonymous with supervisory review of the conduct of transportation. It does not imply any authority to make transportation law in the form of administrative regulations. As a matter of fact, if it had such meaning, there would be no need for any of the rest of the provisions which gives the Commission specific authority to make regulations on particular subjects.

In Section 204(1)(a) of the Act, the Commission is given the power to regulate common carriers by motor vehicle, and is empowered to establish requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records and reports, preservation of records, qualifications and maximum hours of service of employees and safety of operation and equipment.

The very first proceeding the Commission undertook under the Motor Carrier Act in its Report, 1 MCC, page 1, was the proceeding in which it prescribed the regulations [fol. 331] for safety of operation and equipment. Nowhere in that Section is the Commission empowered to make any regulation with respect to the leasing of equipment or the procuring of equipment or the obtaining of facilities for the performance of the common carrier of service. So much for that Section.

The third Section, 204(2), is a general Section, and simply provides similar duties for the Commission to regulate contract carriers, no different from that, as to the establishment of reasonable requirements with respect to accounts, etc.

Section 204(6) is general and provides the duty, that the Commission is to administer the Act, and make all necessary orders in connection therewith, and to prescribe rules and regulations and procedure for such administration.

There you find the first broad expression of power to

make rules and regulations but as you read it closely, you will observe that it is to make rules and regulations and procedure for such administration, namely, for the administration of the Statute.

[fol. 332] Now, if it were argued that the ability to make all necessary and proper rules and regulations was intended to permit the Commission to make necessary regulations of this kind, well-meaning regulations to try to fill a gap which the Commission could not fill, which the Commission felt it could not fill by directly enforcing its safety provisions and others, the answer, I think, is that if so, all of the provisions in the Statute expressing or authorizing regulations on particular subjects are meaningless and unnecessary and mere surplusage. The broad provisions would have taken care of it without those provisions. To so construe the Statute would be contrary to all of the rules of statutory construction, which this Court has previously enunciated many times.

Section 215 is another specific one giving the Commission power to require carriers to file surety bonds, policies of insurance, and that section expressly refers to such rules and regulations as the Commission shall prescribe.

This language would be wholly unnecessary in 204(6) which gave the Commission the authority to issue regula-
[fol. 333] tions governing the conduct of carriers generally, and so, Section 216, in Paragraphs (b) and (d) and (e) are specific and relate to the publication of tariffs and of rates and charges. This section is similar to the provision in Section 6 of Part I of the Statute relating to railroads.

Section 211(c) is specific, and authorizes the Commission to prescribe reasonable rules and regulations for the protection of travelers and shippers by requiring bonds, insuring the financial responsibility of brokers, and the Commission has exercised that Power in Ex Parte MC 39. There would be no need for that power if 204 granted broad, general authority.

Section 220 relates to the matters of accounts, records and reports, and it is specific and the Commission has exercised that specific power.

Section 224 is specific again and authorizes the Com-

mission to require identification plates under such rules and regulations as it shall prescribe. Clearly, the specific power here is to require plates, and there is nothing in that Section that could support regulations as to the leasing of [fol. 334] vehicles.

Judge Kerner: I believe you will need more than the fifteen minutes.

Mr. Burchmore (For the National Industrial Traffic League): I will be very brief and will not impose further on the Court's time that I requested.

Judge Kerner: I think the matters are well taken care of in the brief.

Mr. Burchmore (For the National Industrial Traffic League): These matters are set forth in the brief, and I am trying to go over them as quickly as I can.

Judge Kerner: I should like to get through with the plaintiff's side this morning if we possibly can, and then we will take a recess for about an hour. Is that all right?

Mr. Burchmore (For the National Industrial Traffic League): When the Court considers, as we have been reviewing the particular sections of the Statute, and finds there is a total lack of any expression, either expressly or by reasonable implication of the power which the Commis- [fol. 335] sion would need to make these regulations, I think it must conclude that the Order is void for that reason.

I just would like to mention in closing one further matter which supplements Mr. Ellis' remarks about the letter which went out from Director Blanning of the Bureau to the field forces. This letter was the basis upon which later the investigation was undertaken, and the order of the investigation is extremely interesting in that it stated as the first purpose of the inquiry whether any or all of the present practices of the carriers with respect to the performance of transportation were the use of vehicles owned by others. Interchange of vehicles and leasing of vehicles to private carriers and shippers should be required to be discontinued because it was unlawful or contrary to the public interest, and in proceeding with the case initially, the Bureau of Motor Carriers put in the testimony of Witness Blanning and among other things, introduced a

memorandum called a legal statement used as a basis for the draft of the proposed rules and regulations by the Bureau of Motor Carriers. We refer to this on page 13 [fol. 336] and 14 of our brief, and in that draft it is curiously stated, as I have set forth at page 13, the first significance of the spirit of this whole affair is the concluding request made by Director Blanning to the members of his staff for suggestions concerning, and this is from Director Blanning's request of the Staff—"Any evil results of leasing which are not a violation of the law and which can be corrected by a regulation."

The whole program was undertaken to attempt to reach things which were well known at the outset not to be violations of law, but to be completely in accordance with the law, but which, for some reason of the Bureau were considered to be contrary to the public interest and which they hoped the could change by regulation.

I appreciate this Court's indulgence in giving me the time to present our argument this morning. Thank you.

Judge Kerner: Mr. Jones now.

ORAL ARGUMENT BY PUBLIC COUNSELLOR OF STATE OF INDIANA

Mr. Walter F. Jones, Jr. (For the Shippers and Receivers): May it please the Court, I will not indulge upon [fol. 337] your time over a couple of minutes. I was requested to appear here by a number of shippers and receivers. I think Mr. Ellis and the other attorneys have very ably covered the legal and economic aspects of this case, and what I might say would only be repitition, but certainly the flexibility in the trucking industry has come about as a result of the leasing practices which are now prohibited by these rules, and I think it would definitely be in the public interest, and in the interest of the shippers and receivers of freight in the State of Indiana if these rules were set aside and more equitable rules adopted.

Thank you very much.

Judge Kerner: We will be back at 1:30.

(Whereupon, at 12:15 o'clock, p. m., the hearing in the above-entitled matter was adjourned, to reconvene at 1:30 o'clock, p. m. of the same day.)

[fol. 338] (The Court met pursuant to adjournment and the proceedings were resumed as follows:)

Judge Kerner: You may proceed.

ORAL ARGUMENTS FOR INTERSTATE COMMERCE COMMISSION

Mr. Reidy: (For the I.C.C.) If your Honors please, my name is Edward M. Reidy. I am appearing for the Interstate Commerce Commission. I have here the reports and pamphlet five of the Commission—report five and the report of the full Commission, which are already of record. But the Court may find them a little easier to read.

Judge Kerner: Thank you very much.

Mr. Reidy: (For the I.C.C.) And at this time also I would like to file a brief in behalf of the Commission. The second volume is an abstract of the evidence. The abstract is prepared in the hopes that the Court would not have to read that rather formidable looking record over here on the table. And I really do not think it will be necessary for the Court to do so because there is no allegation in the record of the Commission's action being supported by [fol. 339] evidence. Now Mr. Ellis, with his great ability, has pictured the dire consequences that are expected to result to his clients, the motor carriers, as a result of the Commission's decision in this case. The interests of course which he is so ably representing, are financial interests which certainly do require protection. But there are other interests involved in this matter, and that is the public interest. And I think a reading of the report of the Commission will show that the question of the public interest was paramount in the Commission's holdings in this case. The decision of the Commission in this proceeding was not the result of hasty and precipitated action. Evils resulting from the operations of owners and operators have been raging almost since the inception of the motor truck transportation. And there was much testimony before the appropriate committees of Congress at the time of the Motor Carrier Act of 1935 dealing with that subject; and in view of the fact that Senator Wheeler was a chairman of the Senate Committee at that time, I think he will make further reference to that legislative history. After the Motor Carrier Act became effective in 1935, within a

couple of years, the Commission started an investigation into leasing practices. The long history of the Commis-
[fol. 340] sion's study is depicted in appropriate chapter in the report of May 8, 1951, giving the history of leasing and the reasons why it continued the full hearing in this case that it did is adequately set out. Incidentally, in prescribing rules and regulations like it did for an entire industry and nation wide in character, the Commission has exercised about as high quasi-legislative act as it is possible for it to perform. While quantity alone of course is not necessarily determinative of the Commission's conclusions, I call your Honors' attention, to the fact there were 3,640 pages of testimony and over 120 exhibits. We have attempted in the separate record to abstract that testimony. The Court will but—If the Court will but read the abstract of the testimony, we think it will apply the rule so familiar to the members of this Court that if the Commission's conclusions have a rational basis, it is not the function of the Court to substitute its judgment for that of the Commission's. Now there was some sharp criticism here this morning because Director Blanning of the Bureau of the Motor Carriers used the word "gypsy." That is a well recognized term of art in the motor carriers industry,
[fol. 341] and while I have said I do not think it is necessary for the Court to read the testimony that was before the Commission, because there is no serious allegation about the Commission's conclusions being unsupported by evidence, I hope your Honors will take the trouble of reading Exhibit 51 together with the attached twenty-four replies to that exhibit. That was an open letter addressed by a big motor carrier in New England, the Adley Express Co., Inc., and it was addressed to the industry about the same time the Commission started its hearings in this case, and it is entitled "Gypsy Operations—What Do they Mean to the Motor Common Carrier Industry and to You?" That pamphlet and statement by an experienced operator of trucks is as able a statement in support of the Commission's order as I think you will find in the entire record and that it is not a mere isolated statement of one trucker is the reason that I am asking your Honors to refer to the twenty-five pages by some

trucking concerns and associations ordered 200 copies of Mr. Adley's statement, and that statement clearly depicts the evils resulting from leasing and how it is breaking down the rate structure of the country.

Judge Platt: Pardon me, is that exhibit in your abstract? [fol. 342] Mr. Reidy: (For the I.C.C.) It is just referred to in the abstract, your Honor. The exhibit itself is rather voluminous. There is only this copy, but I will be glad to supply additional copies.

Judge Kerner: I wish you would, Mr. Reidy.

Mr. Reidy: (For the I.C.C.) Excuse me while I put this back. And in the Commission's report in the case they point out the abuses that the evidence showed results from the present leasing practices in the motor carrier industry. And incidentally, the American Trucking Association, the national organization of truckers, appeared before the Commission and during the proceedings they introduced themselves what they thought would be reasonable rules with respect to the leasing and interchange of equipment. I think it is safe to say, your Honors, that everybody that has made any study in this subject, and it is brought out in the report of the Commission, was of the view that the subject matter did require some correction, and that is shown by the national organization itself submitting proposed rules and regulations which I made an appendix to the Commission's report in this case. The fact that the Com- [fol. 343] mission did not see fit to adopt the A.T.A. regulations is, of course, no reason why the order should be invalid; otherwise, the Commission would be delegating its important functions to a segment of the motor carrier industry. It is always a little difficult to—here to understand the opposition of the Secretary of Agriculture in fighting an order of the Commission, the effect of which is to stabilize conditions in the industry and wipe out wasteful practices and prevent unauthorized extensions of operating authority by legitimate carriers and result in a sounder financial rate structure. Now the report of the Commission, 52 M.C.C. 675, that is one of the pamphlets that I handed up to you and also in the Commission's brief beginning at page seven and running to page 10. I list findings by the Commission showing abuses resulting from

leasing and interchanging practices at present and the figures in parenthesis are to the appropriate pages of the report where those findings are made. Now I don't think it is necessary to bother the Court by reading all of them as long as they are set out there, but this thing of trip-leasing business has been the main problem where, for instance, an agricultural truck that had come up from [fol. 344] Florida to maybe Indianapolis—I guess they come in, for they certainly come to Washington—with a load of citrus fruit in the winter time, and then they are a thousand miles from home and they want to make some arrangements about going back. Well, that is where the principal evils of leasing come in; they are going to—they are willing to take almost anything in order to get back. And some of these authorized carriers who operate, say, from Indianapolis to Florida, will lease those vehicles and the—quite frequently. As shown by the evidence, it is doubtful whether the equipment is adequately and safely maintained and whether the drivers have not violated the hours of service regulations.

Judge Kerner: Is it a waste if that truck goes back to Florida empty?

Mr. Reidy: (For the I.C.C.) It does seem uneconomical in requiring it to go back empty, but they can—The difficulty comes, I think, in letting it come up in the first place. You take the railroads, for example. During the fall harvest season, thousands of cars are rushed to the middle west to take care of the crops that are about to mature and to move them before they spoil. Any rate on grain and grain [fol. 345] products, of course, has to take into consideration the empty movement one way, and I think any operation of farm commodities or anything else——

Judge Kerner: (Interposing) Does this record disclose these cars moved to the West empty that you are just talking about?

Mr. Reidy: (For the I.C.C.) Well, there isn't anything in this record——

Judge Kerner: (Interposing) That is what I thought.

Mr. Reidy: (For the I.C.C.) But there is in this record, however, that these truck-away-cars—they are the kind that you see along the highways that carry four cars

especially adopted for carrying new automobiles. There is no other commodity that can be used in those vehicles and they return to their base operations empty. Now, as I say, the Commission found that trip-leasing was the big problem. There is no protection for insurance; safety is adversely affected; it is difficult to enforce the law; drivers' hours and service requirements are violated—resulting in breakdown of the rate structure; and based upon all these findings and all the others in the voluminous report of the [fol. 346] Commission, the Commission found it was necessary in order to properly administer, execute and enforce the Act and regulations thereunder, that reasonable rules and regulations be prescribed governing the lease and interchange of equipment, and those are the ones that are before your Honors now for review. And I might say in passing that if these proposed rules and regulations do have anything like the dire consequences that are pretended here, the Commission is also open for appropriate modification of its order. And this is brought out most clearly by a decision of Justice Frankfurter in National Broadcasting Company against the United States, and I am sorry that isn't cited in my brief and I hope you will make a note of it because it is a particularly important case.

Judge Kerner: It is reported where?

Mr. Reidy: (For the I.C.C.) It is 319 U. S. 190 and it involved an order of the Federal Communications Commission prescribing rules and regulations for the chain broadcasting and the same argument was made there as is made here, namely that the Congress did not legislate with enough specificity to justify that Commission to make [fol. 347] rules and regulations that it did. Justice Frankfurter pointed out, of course, in creating these administrative agencies and conferring important duties upon them, Congress does not fill in the details; it gives them broad general authority and leaves it up to them to apply the law to the particular circumstances that arise. We have a chapter in our brief devoted to the judicial review of the Commission's orders on which I am not going to spend any time. The main point here and the main point discussed by the Commission is whether in fact Congress had conferred authority upon the Commission to

prescribe these rules and regulations. The pertinent provisions of the law are set forth and applicable rules of law and pertinent decisions of the Supreme Court dealing with the subject matter are also stated beginning at page 600—697 of the Commission's report of May 8, 1951, and running to page 703. That is really an excellent discussion in itself as to the statutory authority in which the Commission de-ordered it as it did here.

Judge Platt: Pardon me, I don't find the page.

[fol. 348] Mr. Reidy: (For the I.C.C.) It is the decision of May 8, 1951, and it begins at 697 and runs through a large part of 703. We have also discussed that, to some extent, in Chapter 3 of our brief, and in connection with that particular discussion, I want—I also, in the Court's consideration of that problem, would like to have it referred to the National Broadcasting case, 319 U. S., in connection with that point also. Of course, the history of transportation in the United States shows that before there has been any major legislation, or even before there have been any major decisions by the Commission that parties affected by it paint or attempted to paint dire consequences. The history of the Interstate Commerce Act of 1887 shows that, and when Congress was endeavoring to put motor carriers under the Act in 1935, many in the industry thought the regulations would adversely affect it, and the same is true with respect to putting water carriers under the Intersfate Commerce Act in 1940. But today I think you will find that of practically all of the regulated carriers, very few of them would advocate freedom from regulations because this form of regulation has brought stabilization and order out of what formerly was chaos, and I think the same re-

[fol. 349] sults will apply in this case. Now there is a faint contention made here that there was an unlawful delegation of Commission authority—of an unlawful delegation of legislative authority to the Commission in this case. Of course, the Commission has had legislative authority, quasi-legislative authority, delegated to it since 1887, and this is just another aspect of the same thing. So I don't think it is necessary to spend any additional time on that. The language of Chief Justice Hughes in the Panama Refining case is such a clear cut exposition that I

hope the Court in our brief will examine it. That case is referred to at page 39.

Now the next point urged by the Plaintiffs in this case is that the Commission's power to regulate leasing and interchange of equipment is limited by a proviso of Section 208(a). The proviso in Section 208(a) is to the effect that, "no terms, conditions or limitations", in a certificate issued by the Commission, "shall restrict the right of a carrier to add to his or its equipment and facilities", as the demand of a business may require. Of course, if you take a truck, for instance, that starts out operating we'll say [fol. 350] between here and Chicago with two trucks as a general commodity hauler, his business may increase until he has fifty trucks. And that provision in the law means that the Commission can't, in its grant of certificate, limit it to the two trucks, and the Commission has not done so, but that don't hold and never was intended to hold, that the Commission can't review the method that a carrier may have of supplementing the number of trucks that it will use in performing the increased business. That matter is also discussed at pages 702-3 of the Commission's report herein. In respect to the Administrative Procedure Act, the question—the complaint seems to be that Director Blanning, when he first appeared, he was the first witness in the case and gave—and testified of abuses that the motor carrier industry had been guilty of as developed by studies of his field office. Of course, he was not in any position as a first witness in the absence of any testimony from any other side to formally suggest to the Commission what rules and regulations they should enter, but as soon as the record was completed, the Bureau of Motor Carriers did perform that obligation, if it is an obligation, under the [fol. 351] Administrative Procedure Act, and I think it met all the requirements of that Act. It has been stated here this morning by Mr. Ellis that we put him to great hardship and he had to get certified copies of these annual reports. Well, I can refer your Honors to two decisions of the Supreme Court where the Commission referred to annual reports that were not part of the record in the particular case, and the Supreme Court's—the Supreme Court set the order aside because it said that nothing could be

considered as evidence in the files of the Commission that was not introduced in a particular case. And if we had relied upon any of the material in those annual reports, you may rest assured that Mr. Ellis would be one of the first to rely on those decisions." Some significance is attempted to be made by the fact that Commissioner Lee dissented. Commissioner Lee is a very able Commissioner. He is Chairman of Division Five, but the other commissioners have ample duties to perform under the Motor Carrier Act, and in our system of government, we are governed by the majority. The Supreme Court has recognized there may be dissents in the Commission and is not a matter of legal significance, and there has been some [fol. 352] clear statement——

Judge Kerner: (Interposing) Except under the Camera case recently decided that fact should be taken into consideration.

Mr. Reidy: (For the I.C.C.) Yes, they were speaking there about the examiner's proposed report.

Judge Kerner: That is right.

Mr. Reidy: (For the I.C.C.) If an agency reversed an examiner's proposed report, it ought to have a little more evidence than where it agreed with it, but that wouldn't apply to this case anyway because there was no reversal of the examiner's proposed report. Those may be a little fuller regulations. As a matter of record though, Mr. Ellis has said that three of these commissioners just couldn't stomach what the Commission was doing. It was so harsh and drastic and unworkable that they wouldn't have anything to do with it. Well, as a matter of fact, Mr. Knudson, who has been connected with the Secretary of Agriculture, was promoted to the Interstate Commerce Commission during the pendency of these proceedings. And presumably because of his former connection with the Department of Agriculture, the Secretary being an inactive [fol. 353] participant herein did not see fit to participate. Mr. Mitchell was in the hospital at Rochester, Minnesota during the time the Commission was having conferences concerning these cases, and Mr. Rogers, the third commissioner who didn't participate, had recently been appointed to the Interstate Commerce Commission and the Teamsters

Union was opposing his confirmation at the very time on the very grounds that approving the leasing rules of Division Five, of which Commissioner Rogers was a member, and which were much less severe than the ones finally adopted by the Commission. Commissioner Rogers had not gone far enough in protecting the interests of the International Teamsters Union and therefore they were opposing his nomination, and consequently he didn't feel free at the time to participate in the decision, and so there is very good reason for those commissioners' failure to participate, and no insinuation that they couldn't stomach this decision is to be indulged. It is also claimed here that there is discrimination here in favor of the rail carriers. There is no rail carrier that can substitute trucking service for motor carrier service. That is one of the most strict requirements of the Act—to keep the railroads out of the trucking busi-
[fol. 354] ness unless, in each case, the Commission makes specific findings, and it has made those findings in all of those cases. They have been proved by the Supreme Court in practically every case that has gone up there, and including two in the last term; and furthermore, it is just an after thought, because as the Commission points out in its report at 723, there is no serious objection made by anyone in the proceedings before the Commission as to why railroads could be exempt from the requirements of this leasing order. Now the transportation policy which has been referred to imposes on the Interstate Commerce Commission a tremendous obligation of seeing that the people of the United States have an adequate system of transportation without an uneconomic or inefficiency with proper coordination between all forms of transportation. Now Congress has conferred that great job on the Commission, and one of the means of carrying out that work is to eliminate the abuses and practices—the harmful practices that have resulted from this leasing business as developed by the report and by the evidence. Now it certainly would be most anomalous if, having imposed this tremendous obligation on the Commission, the Congress did not give the Commission adequate tools to do the job. And that is
[fol. 355] proper statutory authority, and I might say that this record shows there are at least seventeen states

that now regulate leasing in interstate commerce. And I think the State of Washington intervened in the three-judge court down in Alabama where this very order is under submission now, and its complaint was that the Commission had not gone far enough, that the State of Washington itself had eliminated leasing in all respects. Unless your Honors have anything further, we will subside.

ORAL ARGUMENTS FOR INTERVENING RAILROADS

Mr. Helmetag: (For Intervening Railroads) If it please the Court, I represent the class one American Railroad-which includes most of the large railroads in the country; the railroads participated in the proceedings before the Commission which led to the promulgation of the involved rule. We have filed our briefs with this Court. It is a brief in a light buff colored cover, and in this brief I have at some length gone into the legality and the propriety of the Commission's rules. I think the Court has before it the proper document. That's it. Now I think in order for the Court to understand what this case is about, we have to go into the basic philosophy of the Motor Carrier Act [fol. 356] which is Part I and II of the Interstate Commerce Act. The Motor Carrier Act establishes a group of regulated carriers—carriers that have responsibilities to the public, responsibilities in the nature of providing——

Judge Kerner: (Interposing) Will you pardon me again. I have forgotten your name.

Mr. Helmetag: (For Intervening Railroads) Helmetag, Sir. As I say, they have responsibilities in the nature of providing service on a non-discriminatory basis. to the public. Now in return—not in return but as a result of these responsibilities, they have certain privileges and their privileges are competing in a field of limited transportation; and the Congress has given to the Commission the power to make the amount of motor carrier service available and commensurate with the demand for that service and those powers are set forth in the sections of the Act which give the Commission the power to certificate motor common carriers and to grant permit to motor contract carriers. It is—So long as the demand for transportation and the availability of transportation are related, can

there be sound motor carrier transportation as contem-
[fol. 357] plated by Congress. Outside of regulations there are a vast number of motor truck operations which are comparable to the operations within regulations and these operations largely grow out of the fact that Congress saw fit not to bring under the economic scheme of regulations motor truck hauling, agricultural commodities, and also left outside of economic regulations private car carriage. That is an individual transporting his own goods in his own truck; so you have a vast reservoir of trucks which are outside of regulations which are a counterpart of vehicles used by the carriers under regulations. The carriers have found in the device of trip-leasing that they can bring into regulation at their own caprice without the approval of the Commission those outside of regulations and transfer very neatly their obligations under the Act to those outside of regulations. The typical example comes about where you have a—Take the hauler of agricultural commodities who reaches his destination. He has a truck and he owns a truck and he is the driver, and the motor carrier—the authorized carrier, can bring him into the regulated family of transportation and give him the percentage of revenue and in that way take care of all their responsibilities under the Act. Now this results in a com-
[fol. 358] plete breakdown of the economic scheme of regulations that Congress set forth for the motor carrier industry. The abuses have been made and followed, and counsel for the Commission went through briefly some of those abuses. The Commission, from the very inception of the regulation in 1935, has had this problem before it and has made innumerable field studies to ascertain what ought to be done. It decided to exercise its rule-making power to promulgate a set of rules which would adequately cope with this situation. The rules do several things, and there are several things that the rules don't do, and what they don't do is almost as important as what they do do.

There are three key rules. The first rule is that where a motor carrier leases a vehicle and that vehicle be driven by the owner of the vehicle, that is a so-called owner-operator, the lease must be for more than thirty days duration. The theory of this rule is that if the lease is of

long duration, the motor common carrier will orient the operation of this independent contractor into its own operation and handle the transportation much in the same manner as it would if it were using its own vehicle. It will inspect the vehicle; it will make certain the driver [fol. 359] obeys the hours of service; it would just use that vehicle in the same way it would use its own vehicle. Now the second key rule is a rule that prohibits the carrier from dividing its revenues with this owner-operator. The theory, I believe, behind this rule, is that if the carrier transfers—that if the carrier divides a portion of its revenue with the owner of the leased vehicle, it will divide a portion of its responsibility with him. If it gives him ninety per cent of the revenue, it gives him ninety per cent of the responsibility and thereby places on those outside of regulation the responsibilities which the authorized carrier is supposed to shoulder. It is interesting to note that the Act itself prohibits a carrier from dividing its revenue with a non-carrier; only carriers may divide revenues. Otherwise, all types of abuses will result. Now what the Commission's rules don't do is often overlooked by those who are opposed to the Commission's rules. The Commission's rules do not prohibit the carriers from leasing vehicles. They can lease all the vehicles they want; furthermore, the Commission's rules don't prohibit the carrier from buying trucks. They can buy all they want; they can build all they want. They can trip-lease vehicles. [fol. 360] This—The only thing is, that if they trip lease vehicles, they must use their own employees to drive them because the Rule 207—the rule set forth in 207 says that where the vehicle is to be driven by the owner thereof, the lease must be of over thirty days duration, so that these rules do not prevent the carriers from augmenting their fleets; they can still augment their fleets by lease, purchase or building trucks. All the rules do is to prevent the carriers from under the disguise of leasing, transferring their responsibilities to others outside of regulation. Now the—Mr. Ellis this morning pointed out there is no specific language in the Act which would give the Commission the power to regulate the leasing practices of the motor carriers, and I think he would have you believe from that state-

ment that you must look in the Act and find out whether there is specific language to the effect that the Commission has the power to prescribe rules governing the leasing practices of the motor carriers. There is no such requirement in our law. The Supreme Court in the Sea Train Case, which is United States versus the Pennsylvania Railroad, has decided this. In the Sea Train Case, the question is whether or not the Commission had the power to order [fol. 361] the railroads to make available their cars to competing water lines, namely the Sea Train Lines. Sea Train is a water carrier which transports railroad cars on ocean going vessels. Now the railroad contended that there was no language under Part I which would authorize the Commission to compel the railroad to turn over their cars to their competitors, and the case went before the Supreme Court, and Mr. Justice Black in upholding the Commission said, "There is no language in the present Act which specifically commands that railroads must interchange their cars with connecting water lines. We cannot agree with the contention that the absence of specific language indicates a purpose of Congress not to require such an interchange. True, Congress has specified with precise language some obligations which the railroads must assume. But all legislation dealing with this problem since the first Act in 1887 has contained broad language to indicate the scope of the law. The very complexities of the subject has necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action [fol. 362] and in the light of the congressional purpose to foster an efficient and fair national transportation system."

So that the Supreme Court has already held in interpreting the Interstate Commerce Act, you don't have to find a specific language in that Act to authorize the Commission to use its rule making power. You just have to find what the general purpose of the legislation is and then find that the Commission in exercising its rule making power has implemented that purpose of Congress, and that is exactly what they have done here. They have prescribed rules

that, in effect, perpetuate the regulatory scheme established by Congress. The scheme was in jeopardy and some of the witnesses before the Commission said regulations had become a joke in the motor carrier industry as a result of the leasing practices. Now I would like to point out that Mr. Ellis made some mention of the Administrative Procedure Act in its requirements affecting the Commission. It is important to note that the Commission here was exercising its rule making power, that is, its quasi-legislative function and not its quasi-adjudication function. The Administrative Procedure Act clearly differentiates between [fol. 363] these two types of functions. There is no obligation on the part of the Commission in this case to hold a hearing, to assign an examiner to the case, to allow the parties to file exceptions and replies, to issue an order or Division Five to permit the party to have oral argument, and finally, to issue a full and complete report of the Commission. All the Commission had to do was to give the people an opportunity to present their views, either in writing or orally, and then to consider those views, issue the rules and regulations and accompany the rules and regulations with a short and concise statement setting forth the reasons why the rules were being promulgated. These are set forth in Section 4 of the Administrative Procedure Act under the heading "Rule Making"; in Section 4(b), the Act reads, "After notice required by this Section, the agency shall afford interested persons an opportunity to participate in rule making through submission of written data, views, or argument with or without opportunity to present the same orally and in any matter; and after consideration of all relevant matter presented the agency shall incorporate in any rules adopted a concise [fol. 364] statement of their basis and purpose of the rules." That is the requirement that the Act imposed upon the Commission and the Commission did far more than the Act required because it went through all the steps that I just mentioned. It allowed the people to come before a qualified examiner and cross-examine the witnesses, to present their views orally, and in effect, to do everything the Commission would have been required to do had this been an adjudication or an exercise of its

quasi-judicial function. As a matter of fact, in the brief filed by the American Trucking Association in the Alabama suit, they state that the Commission fulfilled every requirement of the Administrative Procedure Act, with the exception that the Commission's order did not contain adequate findings of fact. Actually, there was no requirement that the Commission set forth any findings of fact because all it had to do, as I said before, was to set forth a short and concise statement of the basis for its rules, so far as the rules are concerned and their reasonableness. The argument of the Plaintiffs here seems to indicate that the rules are bad because they are stern and harsh and severe. A rule isn't bad because it is severe or harsh or stern. It is [fol. 365] not reasonable just because it is firm. The two are not synonomous. The Commission had a situation here which was causing a breakdown of regulations and stern rules were obviously required. And just calling the rules harsh doesn't indicate in any way that they are unreasonable. Furthermore, the fact that the Commission didn't come forward with the best solution doesn't mean that the rules are unreasonable. There is no protection for the individual that administrative agencies or in all instances set forth the best solutions to every problem. All they have to do is set forth a solution that doesn't deprive the individual of some constitutionally protected rights or that they don't exceed their statutory power. That is, the agency don't exceed its statutory powers. The Courts have upheld rules of the Commission which are much further reaching than these rules in the Assigned Car Cases, a case involving the exercise of the Commission's quasi-legislative power. The Commission issued rules ordering the railroads to allocate their cars among shippers during periods of shortage. Some of the shippers own their own cars, and the question was whether or not the Commission could require the railroads to apply against the shipper's allotment the cars which the shipper owned; [fol. 366] and furthermore, since the effect of doing that was, in many instances, to require the shipper to make his cars available to other shippers in order that they may be utilized, it was claimed the rules were taking the private property of the shippers and interfering with the

carriers' way of doing business. The case went to the Supreme Court and the Supreme Court in an opinion by Mr. Justice Brandeis upheld the Commission's power and pointed out there was not any constitutional taking of the property.

Judge Kerner: What case are your referring to now?

Mr. Helmetag: (For the Intervening Railroads) The Assigned Car Cases, Sir. We refer to them in our brief.

Judge Kerner: I just wanted to make a note of that.

Mr. Helmetag: (For the Intervening Railroads) Yes, Sir. And, as I say, the Court found that those rules were not taking the property of the people. All they were doing was requiring the railroad to make a fair and equal distribution of the facilities of the transportation among the [fol. 367] various shippers. In the Assigned Car Cases, the argument was made that the rules were universal in application; that they were applied to all railroads regardless of whether the railroads have been guilty of any abuses. The same argument has been made by some of the complainants in this matter, that the rules apply universally regardless of whether the particular motor truck is affected—has committed any of the evils which were referred to The Court said that doesn't make any difference. You have a rule of general application, and the question isn't whether the rule as applied to a given industry is unfair or harsh, but whether the rules applied to a nation-wide basis are a fair and reasonable solution to the problem. There is no doubt, and it is admitted by all, that these evils exist in the motor carrier industry, that something ought to be done about them and the Commission has come forward with a forthright solution which we believe is well within the Commission's power, that it doesn't take the property of these motor carriers in violation of the Constitution that the Commission's Act had within the terms and the spirit of the Administrative Procedure Act, and that therefore, the rule and regulations are valid and should be allowed to become [fol. 368] effective. I set forth these arguments in greater detail in my brief, and I would like to ask the Court to examine the brief fully, if I may. Thank you very much.

Judge Kerner: We will be glad to do that.

Senator Wheeler: (For Teamsters Union) May it please the Court, we represent the International Teamsters Union, and someone has asked me what their interest is in this matter. First of all, I want to say that they are interested in the welfare of the industry as a whole because of the fact that if the industry isn't prosperous and successful, then they cannot get good wages. Secondly, they are interested, vitally interested, for the safety of their members. They have over one million members in the Teamsters Union and they are vitally interested from the position of safety. Now the issues presented, and I might say that we have briefs that were filed in the Alabama case; we have not had briefs but they will apply the same—the same briefs will apply to this case as they did in the Alabama case.

Judge Kerner: Do you want to file those briefs?

[fol. 369] Senator Wheeler: (For Teamsters Union) We would like to file those briefs here.

Judge Kerner: You may.

Senator Wheeler: (For Teamsters Union) The issue presented here, it has been stated—it will be said that the case involves primarily whether the Commission has statutory power to issue rules and regulations governing lease and interchange of vehicles by motor carrier's property. That states the proposition entirely too narrow. The question involved in this case is not just with reference to the interchange of vehicles and so forth. The question is, has the Commission under this law the power to regulate the industry, and we submit that under the provisions of this Act it has. Now the question of taking away the property right—as you perhaps know, I was chairman of the committee and served on the committee for something like twenty-four years. I am quite familiar with the Commission's procedure and with the various laws. That same argument has been presented to the Committee in every case that has come before the committee with reference to the regulations of various industries and the Utility Holding Company Act. The identical questions were raised [fol. 370] practically before the hearing. And your eminent statesman and lawyer, Mr. Willkie, appeared be-

fore the committee on the question of passing the regulations of the utility holding companies. Now it was not because all of the holding companies were bad that we passed that law, because some of the utility holding companies were doing a rather legitimate and honest business. We passed the law because of the fact that some of them in the industry were resorting to practices against public interest, and in order to reach them we had to pass stringent laws and to do away with the holding company in its entirety, except in specific cases where we gave the Commission power to regulate them. The same thing is true in practically every industry that comes before them for regulations. It isn't because of the fact that all of them are bad. It isn't because of the fact that perhaps seventy-five percent of them—or that only twenty-five percent or ten percent of them are bad, but in order to regulate bad practices you have to give the Commission the power to regulate them entirely and if necessary, to stop those practices, you have to put in severe rules and regulations. Now it must be borne in mind that the Interstate [fol. 371] Commerce Commission has to regulate the railroads, the water carriers, the trucks and buses. Now they have to look at it, not just simply from the standpoint of the buses and the trucks or the railroads or the water carriers. You have to look at it from the general public good for—of the transportation industry as a whole. That is what the Congress and its power laid down in the opening statement of the Transportation Act, that they should look at the question from the broad standpoint of the industry. And here is the language that was used in the Act, and this was put in there partly because the railroads wanted it and partly because the water carriers wanted it, and partly because of the fact that the trucks and buses wanted it.

> "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation, subject to the provisions of this Act, so administered as recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic conditions in trans-

portation among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with [fol. 372] the several States * * * ", and so forth.

And so we laid down that—that was the general principle. That was the transportation policy laid down. Now the Agriculture Department comes in here, and of course, they are looking at it from a very narrow standpoint. They would give you the impression that they are looking at it from the public good. It is the Interstate Commerce Commission that the Congress has set up to look at it from the standpoint of public good. They come here representing a group of pressured people; they say they are representing the farmers' union. They are representing the various groups. Did any of those people testify before the Commission? Not at all. None of them ever appeared. They went eventually to the Agricultural Department. And you must bear in mind this: Here is a little bureau in the Department of Commerce, and under the law it said you must look into these things, and so forth; and they have a right to appear before the Commission and—but they don't—they are not set up to regulate the transportation policy of the United States. They are appearing for a special group, and I shall come to that in a few moments [fol. 373] to show that as a matter of fact, when this Act was passed, who was it that came before the committee and asked for—came before the Commission? What was their testimony? Here is the testimony of an Indiana grain dealer:

"This cut throat truck competition is a menace to the Nation. Soon country grain elevators will be compelled to close their doors, adding thousands of trucks to the already menaced highways in hauling grains and produce to the markets. * * * If trucks are allowed to keep going without subjection, in a short time farmers will be compelled to pay much higher transportation cost on their produce than they ever paid to the railroads."

The manager of the American Fruit and Vegetable Shippers Association came before the committee—their testimony was originally before the committee of Congress that had this Act under consideration:

> "We now have on the highways of our country any number of motor vehicles which we have termed bootleggers". (That is what they termed them—bootleggers). "They will start from anywhere and go anywhere * * *" (That is exactly the condition that exists today), "haul anything for any price * * *"

That is exactly what you have today, because they ask about these fruit people. They come in—The testimony shows that the farmers come into New York, we'll say, from the South. They want to get some transportation [fol. 374] back. They're willing to take it at any price, at any price. I think the testimony showed that they were willing in some instances to take it for practically nothing. And the testimony also showed that sometimes they go to a shipper—they go to a shipper and they get the business. They don't go always to the common carrier; they go to the shipper and they agree to take that upon the terms that they agreed, and then they call up—they call up the common carrier and he gives them the right to take that—providing that he gets a cut out of what they are getting.

Now in order to understand really what this whole question is about, it seems to me that you have to go back and see what was before the committee in 1935. I happened to be chairman of the committee. I happened to be chairman of the committee at that time. Previous to that time, back in 1925, the Congress of the United States—There was a demand on the part of the Congress of the United States to pass legislation regulating trucks and buses. That legislation didn't get any place.

Judge Steckler: I would like to ask you a question, Senator. Why was this practice fostered during the war [fol. 375] and why is it not good now?

Senator Wheeler: (For Teamsters Union) I am very happy to answer that question. The reason why it was fostered during the war was because of the fact during the war, in order to get—I know the situation. Commissioner

Johnson of the Commission, who was Coordinator, came to me and worked with the committees of Congress in order to get the Government—that had to do with procurement, to get them to build more box cars and more railroad equipment. They weren't able to get that equipment in order to get the products to the market, and he fought it and members of the committee went down before the Production authorities. I went down there with them; other senators went down there with them saying 'you have got to give more box cars in order to get the freight to the ports in New York', because, they said, 'it doesn't do any good—it doesn't do any good to manufacture these goods and have it out here in Illinois, Indiana or California, unless you can get it to the ports to be shipped'. And as a result of that fact, you had a shortage of transportation at that time and was not able to handle it; and so the Coordi-
[fol. 376] nator then said, 'the bars are down and you can do anything you want to'. It was a national emergency at that time because of the situation that existed, and that is the only reason under the sun that happened at that time.

Now in 1937, the Commission did pass a rule in which it said that anybody that—that they had to have the drivers—if they leased it, the common carriers had to have their own drivers. Now I want to call your attention to the Act, to see why the Act was passed in the first instance. This is Commissioner Paxton speaking with reference to the motor transport industry. He says that—

> "The depression has increased the difficulties of the industry. It has drawn many unemployed into the business, has made thousands of second-hand trucks available at low prices, and by low labor, fuel, and tire costs has invited their purchase. The abundance of labor to be had at low wages has stimulated cut-throat competition between operators who have wanted to maintain high or reasonable standards of employment and those who have been willing to exploit labor, either as a matter of deliberate policy or from necessity. In brief, the depression has lowered the standard of living of the industry."

[fol. 377] "Two other factors enter in. Shippers have a measure of responsibility for present conditions. As a

class they may have recognized the unwisdom of grasping to the full the opportunities for low rates which have been open, but individually they have done little to discourage, and much to encourage, the cutting of rates to levels known to be unremunerative."

And then he goes on to say——

"While truck manufacturers have done extraordinary work in developing the truck and of late have done much to educate operators in its more efficient use and operation, some have at least not discouraged harmful practices of their sales representatives. Inexperienced, and often ignorant and poor, individuals have been induced to buy trucks, on the installment plan by high-pressure salesmanship and reckless representations as to prospects for traffic and earnings. Such exploitation of operators has been a substantial factor in the present low state of the industry. While it is understood that this condition has been much improved, there is need for a thorough house cleaning of sales practices."

Then he goes on to say——

"Having no noncompetitive traffic to furnish reserve strength, the trucks cannot apply that theory as fully or as effectively as the railroads. Yet they do apply it to some extent. The most familiar example is that of back-haul traffic, where the operator accepts loads moving against the general direction of traffic at very low rates, on the theory that otherwise the truck would [fol. 378] go back empty." (Exactly the same condition that we passed this law for, in order to correct it). "A further example is the long haul, particularly when there is interchange between connecting truck lines. For illustration, rates could not be made high enough between New York and Denver to warrant the operation of trucks handling such traffic exclusively. However, operators from New York to Buffalo, from Buffalo to Detroit, from Detroit to Chicago, and from Chicago to Denver, will take on such traffic

at low rates, on the theory that it occupies space in their trucks which would not otherwise be filled. This 'out-of-pocket' cost theory is, it may be said, an element of great danger to the entire transportation industry, particularly as competition becomes general rather than incidental."

He said the Committee agreed——

"The report of the Joint Committee of Railroads and Highway Users, made on January 30, 1933, is also significant. The committee agreed that motor common carriers should be required to obtain certificates of public convenience and necessity designed to assure financial responsibility and reasonable protection of existing carriers, to keep proper accounts and file reports, and to observe such regulations as to qualifications and hours of service of drivers as the administrative authority might prescribe in the interest of public safety on the highways."

He said——

"'Adequate requirements should be imposed upon common-carrier trucks in interstate commerce to insure just and reasonable rates, * * *'", and so forth.

[fol. 379] "Stress is laid on the large number of truck operators, said to run into the hundreds of thousands, on the small scale of their operations, on the difficulty of keeping informed of their movements and charges, on the likelihood of extensive 'bootlegging' of service and charges, and on the difficulty in obtaining accurate accounting and reports, many of the operators being without education or training in such matters. It is also urged that if Federal regulation could be made to work, it would be at the expense of the flexibility and quick adaptation to special conditions which is one of the great virtues of trucking operations."

It is very reasonable. Now they are claiming that they want this because of the flexibility. That is one of the reasons that they say, if you will permit us to go out and get these

people, then you can have more flexibility. Again, he said——

> "It is likely that regulation of the kind proposed will somewhat lessen the flexibility of truck operations and set up requirements which small or poorly financed operators will not be able to meet. But it should confer benefits on the trucking industry which will more than compensate for *for* these losses, by promoting a more orderly conduct of the business, lessening irresponsible competition and undue internal strife, encouraging the organization of stronger units, and otherwise enabling the industry to put itself on a sounder and more generally profitable basis."

[fol. 380] "It may be urged," he said, "that regulation will encourage private trucking and thereby work a serious injury to the for-hire section of the industry. There is little reason to believe that important injury would result. As the legislation proposed would debar the private operator from transporting freight for hire, unless he submits to the regulation proposed for for-hire operators, his opportunity to fill up outbound loads and to pick up for-hire traffic on return trips would be materially limited. Such a restriction is justified for the protection of the common carrier upon whom the general public must depend.

"This change would reduce the radius of operation of the strictly private carrier, except where, for example, he can carry his own products out and bring back raw or semifinished products or other supplies for his own use."

Now when the farmers came and testified before the Interstate Commerce Committee when this bill was pending, what did they say? They said—The milk dealers came before the Committee and they said we want to exempt farmers because of the fact that some of these farmers, they go out and they have their neighbors and they take their milk to market; others said the same thing with reference to fruit and vegetables—that the neighbors took them to market and they didn't want to have to apply to the Interstate Commerce Commission in order to do it.

[fol. 381] Did they say anything about going on the general commodity and hauling it back and getting the gypsies? The only reason the Committee exempted them was because of the statement made before the Committee at that time that it was unwise to make them come before the Committee every time they wanted to haul some milk or some fruit to the market or vegetables to the market. And they said the neighbors get together and one hauls this time and another one hauls it again, and another one hauls it next time, but today it has gotten to be a wreck. It isn't a little farmer; it isn't a group of small farmers; it is big people who make it a practice, not the farmer that is taking his truck to market. But it is the hauler who goes to work and claims to be exempt because he is hauling exempt products for farmers to the market. But that isn't what they asked for when they came there and asked for the exemption at all. Now as I say, when the National Traffic League, who appears here today—they appeared before the Committee on opposing regulations of any kind. They said that it ought to be looked into; there ought to be some minor little regulation but it ought to be looked into and further investigated, notwithstanding the fact [fol. 382] there was agitation in Congress as early as 1925. That continued up—and we passed one bill through the Committee just regulating buses because there was opposition to the trucking. It came to the Senate and when it came before the Senate, the Senate sent it back to the Committee because they insisted that we should have regulations of trucks as well as buses. And as a result of that, the Act of 1935 was passed.

Now when you look at it, what is happening since that time? Let me call your attention to the conditions that exist in the industry today, and this isn't just from the—I am reading now from the appendix filed by the Interstate Commerce Commission.

> "According to a witness for the members of the Chicago-Milwaukee Motor Carriers Conference and the Chicago Suburban Motor Carriers Association, they are common carriers of general freight. They are short-haul carriers, and many of the Chicago-Subur-

ban group are interstate carriers in Illinois. They do not comprise all carriers operating between Chicago and Milwaukee or in the suburban areas of Chicago."

And then he said——

"The members rarely encounter emergencies in their operations where it is necessary to augment their equipment immediately. They do not trip-lease equip-
[fol. 383] ment, or at least only on rare occasions. Some of them operate equipment on a continuing long-term basis, where the driver becomes an employee of the carrier."

Then they said——

"According to the same witness, there are carriers in central territory who own no equipment and have none under long-term lease. Instead, they rely on the open market to get their equipment. There are 11 or 12 places in Chicago where itinerant truckers have 'a sort of registration system.' A motor carrier needing their services contacts one of those spots and advises what he wants. It was estimated that there are some 600 or 700 itinerant truckers in Chicago who are not tied up with any one company. Among such operators, 'the mortality rate is very, very great.'. An operator's 'chances of coming out whole are considerably lessened unless * * * he is attached on a permanent basis, long-term agreement, with a good company who sees to it that he gets employment on the seniority basis the same as if he was a regular driver.' Otherwise, his existence depends upon his ability to drive excess hours * * *"

This is the testimony before the Commission that they are compelled to drive excessive hours all day and all night, take pills in order to keep awake, drive off at the side of the road in order to get some sleep.

[fol. 384] The experienced itinerant——

"For example, a shipper ordered a truckload of steel transported from Pittsburgh to Chicago. The operator